

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

6

7 CELSIUS NETWORK LLC,

8

9 Debtor.

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11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 September 14, 2022

17 2:05 PM

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

1 Hearing Using Zoom for Government RE: Motion to Appoint
2 Examiner. (Doc## 546, 588, 723, 730, 731, 732, 734, 735,
3 746, 752, 755, 757, 758, 764, 779, 792, 793, 798, 799, 801)

4
5 Hearing Using Zoom for government re: Debtors' Ex Parte
6 Motion Pursuant to Section 107 of the Bankruptcy Code
7 Seeking Entry of an Order (I) Authorizing the Debtors to
8 Redact Certain Personally Identifiable Information from the
9 Creditor Matrix, Schedules and Statements, and Related
10 Documents and (II) Granting Related Relief filed by Joshua
11 Sussberg on behalf of Celsius Network LLC. (Doc # 344, 364,
12 389, 399, 600, 607, 633, 638, 642, 643)

13
14 Hearing Using Zoom for Government re: The Official Committee
15 Of Unsecured Creditor's Motion for Entry of An Order
16 Clarifying the Requirement to Provide Access to Confidential
17 or Privileged Information and Approving a Protocol Regarding
18 Creditor Requests for Information. (Doc# 432, 608, 617)

19
20 Hearing Using Zoom for Government RE: Official Committee of
21 Unsecured Creditors' Application to Retain White & Case LLP
22 as Counsel effective as of July 29, 2022. (Doc # 603, 814,
23 815)

24
25

1 Hearing Using Zoom for Government RE: Application to Employ
2 Centerview Partners LLC as Investment Bankers filed by
3 Joshua Sussberg on behalf of Celsius Network LLC. (Doc #
4 362, 364, 374, 389, 601, 635)

5
6 Hearing Using Zoom for Government RE: The Official Committee
7 of Unsecured Creditors' Ex Parte Motion Seeking Entry of an
8 Order (I) Authorizing the Committee to File Under Seal
9 Certain Confidential Commercial Information Related to the
10 Application to Retain and Employ White & Case LLP as Counsel
11 to the Committee and (II) Granting Related Relief filed by
12 Gregory F Pesce on behalf of The Official Committee of
13 Unsecured Creditors. (Doc # 602)

14
15 Hearing Using Zoom for Government RE: Motion Authorizing the
16 Debtors to Prepare a Consolidated List of Creditors in Lieu
17 of Submitting A Separate Mailing Matrix for Each Debtor,
18 (II) Authorizing the Debtors to File A Consolidated List of
19 the Debtors Fifty Largest Unsecured Creditors, (III)
20 Authorizing the Debtors to Redact Certain Personally
21 Identifiable Information, (IV) Approving the Form and Manner
22 of Notifying Creditors of Commencement, and (V) Granting
23 Related Relief. (Doc ## 18, 55, 357, 445, 626, 643)

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25

1 Hearing Using Zoom for Government RE: Debtors Motion for
2 Entry of an Order (I) Authorizing Debtors to Serve Parties
3 by E-Mail and (II) Granting Related Relief. (Doc# 640, 702,
4 802)

5
6 Hearing Using Zoom for Government RE: Debtors Motion
7 Pursuant to Section 107 of the Bankruptcy Code Seeking Entry
8 of an Order (I) Authorizing the Debtors to (A) Redact
9 Individual Names, and (B) Implement an Anonymized
10 Identification Process, and (II) Granting Related Relief.
11 (Doc# 639, 702, 806)

12
13 Hearing Using Zoom for Government, Only if There are
14 Objection(s), to the Notice of Presentment of Agreed
15 Reporting Framework Stipulation (ECF Doc. No. 669).

16
17 Hearing Using Zoom for Government RE: The Official Committee
18 of Unsecured Creditors' Application for Entry of an Order
19 Authorizing the Employment and Retention of Kroll
20 Restructuring Administration LLC as Noticing and Information
21 Agent of the Committee Effective as of August 5, 2022. (Doc
22 #433, 443, 617)

23
24 Hearing Using Zoom for Government RE: Kirkland Retention
25 Application. (ECF Doc. # 360, 754, 756, 759, 800, 808)

1 Hearing Using Zoom for Government RE: Debtors' Application
2 to Employ and Retain Alvarez & Marsal North America, LLC as
3 Financial Advisor to the Debtors and Debtors in Possession
4 Effective as of July 13, 2022 (ECF Doc. # 410, 601, 666,
5 667, 765, 805)

6
7 Hearing Using Zoom for Government RE: Stretto Retention
8 Application (ECF Doc. # 361, 809)

9
10 Hearing Using Zoom for Government RE: Latham and Watkins
11 Retention Application (ECF Doc. # 363, 440, 601, 647, 807)

12
13 Hearing Using Zoom for Government RE: Akin Gump Retention
14 Application (ECF Doc. # 392, 810)

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25 Transcribed by: Sonya Ledanski Hyde

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12 MAX GALKA, WITNESS CEO of Elementus

13 DANIEL FRISHBERG, Pro Se Creditor

14 IMMANUEL HERRMANN, Pro Se Creditor

1 P R O C E E D I N G S

2 CLERK: All right, starting the recording for
3 September 14, 2022, at 2:00 p.m. It's for Celsius Network
4 LLC, Case Number 22-10964. Starting to admit participants.
5 All right.

6 All right, I believe Kirkland's going to be
7 joining.

8 WOMAN 1: Yes, Kirkland is here.

9 CLERK: Yes, okay. If you could, just tell me
10 which participants are going to have a speaking line from --
11 is this the Chicago office?

12 WOMAN 1: Yes.

13 CLERK: Okay, so if you could, just tell me the
14 participants from the Chicago office that are going to be
15 speaking this afternoon.

16 WOMAN 1: Sure. This afternoon, it will be Ross
17 Kwasteniet and Chris Koenig.

18 CLERK: Okay, great.

19 WOMAN 1: And then, we also have a listen-only
20 line under the name Susan Golden.

21 CLERK: Okay, so she's listening. All right,
22 perfect. I just need to know the live participants so that
23 they can -- they can speak on the record. And then, from I
24 think the other Kirkland & Ellis line is --

25 WOMAN 1: Yeah, that's the Susan Golden line. We

1 will rename that.

2 CLERK: Okay, great. And then, Judson Brown,
3 Elizabeth Jones, Dan Latona, Joshua Sussberg, and Patrick
4 Nash. Who is -- who is appearing in person, and who is -- I
5 mean, who is speaking, and who is listening?

6 MAN 2: I believe it's going to be Elizabeth Jones
7 and Patrick Nash who will be speaking, and others --
8 everybody else will be listening.

9 CLERK: Okay. Do you know who's speaking first?

10 MAN 2: I think that we're going to start with Pat
11 Nash today.

12 CLERK: Okay, great. All right, thank you. So,
13 does anyone have to -- well, I guess I'll wait until Susan
14 and -- well, not -- wait until the other parties join. And
15 then, if they have to unmute -- we could test if they can
16 mute and unmute. That's all.

17 MAN 2: Okay, great. And can I ask, is our volume
18 okay? Are you able to hear me okay?

19 CLERK: Yes, I can.

20 MAN 2: Okay, thank you.

21 CLERK: All right. Thank you. All right, as
22 parties join, if you could mute your line, that would be
23 most appreciated.

24 All right, just waiting for some parties to
25 connect.

1 All right, Mr. Hershey, are you -- if you could
2 just unmute and give your appearance for the record, please.

3 MR. HERSHEY: Yeah, hi. Sam Hershey from White &
4 Case on behalf of the official committee of unsecured
5 creditors.

6 CLERK: All right. And is there any of your
7 specific co-counsel that's going to be also speaking on the
8 record this afternoon?

9 MR. HERSHEY: Yeah, I have several co-counsel who
10 will be joining. I'm happy to give you their names now, or
11 they can speak for themselves when they join, whatever you
12 prefer.

13 CLERK: Okay. You could give the -- you just have
14 to tell me the parties that are speaking, and also if you
15 could specify who's going to be speaking first on behalf of
16 the committee.

17 MR. HERSHEY: So, my understanding is that Gregory
18 Pesce will speak first.

19 CLERK: Okay.

20 MR. HERSHEY: But I know that also, my partners
21 David Turetsky and Keith Wofford will be speaking as well.

22 CLERK: Okay, I do see David, so I'm admitting him
23 now. And let me look for Keith. I see Keith as well, so
24 I'm admitting him as well.

25 MR. HERSHEY: Do you see Greg?

1 CLERK: I do not see him yet.

2 MR. HERSHEY: Okay.

3 CLERK: I don't know if you want to reach out to
4 him.

5 MR. HERSHEY: I'll reach out to him. Also, we
6 have a couple witnesses, I think, potentially speaking
7 today, one of whom is Max Galka, who we set up with a live
8 line.

9 CLERK: Yes, I did get Max Galka. Is there anyone
10 else that is going to be testifying this afternoon, to your
11 knowledge?

12 MR. HERSHEY: Not to my knowledge, though I see
13 that Keith is -- Mr. Wofford is now on, and Mr. Turetsky I
14 think is now on. They may be aware of other witnesses, but
15 I am only aware of Keith.

16 CLERK: Okay.

17 MR. HERSHEY: Actually, about Max. Excuse me.

18 CLERK: All right, thank you. Good afternoon,
19 Keith. If you could, just give your appearance for the
20 record, please.

21 MR. WOFFORD: Yes, hello. Good afternoon. Keith
22 Wofford from White & Case for the official committee.

23 CLERK: Thank you. And David, if you could unmute
24 and give your appearance as well. I don't know if he hears
25 me. David Turetsky? All right, perhaps I could come back

1 to him.

2 Keith, do you happen to know, besides Maxwell
3 Galka, if anyone else is going to be appearing as a witness
4 this afternoon?

5 MR. WOFFORD: I do not believe there will be any
6 other witnesses.

7 CLERK: Okay, thank you. I appreciate that. All
8 right, so we'll come back. If someone could reach out to
9 David and just make sure that he is able to mute and unmute,
10 in case he needs to speak on the record, that would be most
11 appreciated.

12 MR. HERSHEY: Yeah, I'll reach out to Greg and
13 David.

14 CLERK: Thank you.

15 Okay, it doesn't look like we have anyone on from
16 the US Trustee's office yet.

17 All right, it looks like she's still joining. All
18 right. David? If you could unmute and just give your
19 appearance, just to make sure you can mute and unmute if you
20 need to speak.

21 MR. TURETSKY: Sure, it's David Turetsky of White
22 & Case on behalf of the committee.

23 CLERK: Thank you very much.

24 MR. TURETSKY: Thank you.

25 CLERK: All right.

1 All right, for the parties that have joined, if
2 you are speaking this afternoon, please unmute one at a time
3 and give your appearance for the record.

4 Okay, Max, if you could unmute and just give your
5 appearance, Max Galka. Sorry, I can't hear you.

6 MR. GALKA: Yes, hello.

7 CLERK: Hi. Oh, yes, Max, if you could just state
8 your appearance for the record.

9 MR. GALKA: I'm sorry, state what?

10 CLERK: Your appearance for the record, just your
11 first and your last name, how you're involved in the case.

12 MR. GALKA: Sure. My name is Max Galka. I am the
13 CEO of Elementus, and we are working on behalf of the
14 unsecured creditors committee regarding crypto on-chain
15 analysis.

16 CLERK: Okay, thank you. And I was told that it's
17 possible you may testify this afternoon?

18 MR. GALKA: Mm hmm.

19 CLERK: Okay. If you do, please make sure you
20 have your video on, and then someone will administer the
21 oath to you.

22 MR. GALKA: Okay.

23 CLERK: All right, thank you.

24 MR. GALKA: Great.

25 CLERK: You can mute your line. Okay, great.

1 Yes, Susan? Yes, Susan, you had your hand up?

2 Okay, Mr. Herrmann, are you -- Immanuel, are you
3 making an appearance this afternoon?

4 MR. HERRMANN: Yes. Immanuel Herrmann, pro se
5 creditor.

6 CLERK: Okay. Thank you so much.

7 WOMAN 2: Susan is here.

8 CLERK: All right, there are some -- still some
9 parties that are joining.

10 MR. HERSHEY: Yeah, I'm just raising my hand to
11 let you know that Greg Pesce told me he's in the waiting
12 room, just so you are aware.

13 CLERK: Thank you. Appreciate that. Okay, he is
14 joining.

15 MR. PESCE: Hi, it's Greg Pesce, White & Case,
16 joining the test on behalf of the official creditors
17 committee. Good afternoon.

18 CLERK: Thank you very much. Good afternoon.
19 Your appearance is noted.

20 MR. PESCE: Thank you.

21 CLERK: All right, for any of the parties --
22 actually, parties are still connecting to audio.

23 Okay, for the parties that have joined, is there
24 -- if anyone's speaking on the record, please unmute one at
25 a time and give your appearance.

1 MR. KOENIG: Good morning, again. It's the
2 Kirkland Chicago office. This is Chris Koenig. We have
3 some colleagues in New York, Patrick Nash and Elizabeth
4 Jones. I think they're still in the waiting room. They'll
5 be appearing as well. We just wanted to note that they
6 weren't able to get in quite yet.

7 CLERK: Okay, I'm looking for Elizabeth. I don't
8 see her in the waiting room, so you might want to check
9 with --

10 MR. KOENIG: Yeah, we'll give them a ring and come
11 back to you. Thank you.

12 CLERK: Thank you.

13 All right, the parties that have joined, if you
14 could please unmute one at a time and give your name if you
15 are speaking this afternoon, all right?

16 MAN 3: Are you going to call us, or should we
17 announce -- self-announce?

18 CLERK: If you have not given your appearance yet,
19 please self-announce one at a time.

20 All right, if -- for the parties that have joined,
21 if you are speaking this afternoon and want -- please give
22 your appearance on the record. Please unmute one at a time
23 and give your appearance.

24 Again, the parties that are joining, please unmute
25 one at a time if you are speaking this afternoon, and please

1 give your appearance for the record.

2 Yes, Daniel?

3 MR. FRISHBERG: Daniel Frishberg appearing. I'm
4 objecting to several motions.

5 CLERK: Okay, thank you.

6 All right, Kyle Mason, are you going to be
7 speaking this afternoon? Actually, I'm sorry, I have you as
8 listen-only. My apologies.

9 Do you know if any other counsel from Weil is
10 going to be speaking this afternoon?

11 Okay, Elizabeth is -- Helen Jones is joining.

12 Yes, Chase, if you could unmute.

13 MR. MARSH: Yes, hi. Good morning. This is Chase
14 Marsh. I'm a creditor, and I left a message with the clerk
15 yesterday. One letter that I had filed with the Court on
16 the docket was referenced in today's agenda, and I was just
17 curious if I'm being required or asked to speak on that, or
18 if that's just for reference only.

19 CLERK: I am actually not sure as to that.

20 MR. MARSH: Okay.

21 CLERK: But you could definitely bring it up when
22 the motion is called by the judge and once the judge allows
23 parties to speak one at a time.

24 MR. MARSH: Okay. Thank you very much.

25 CLERK: All right, thank you.

1 All right, are there any parties that have joined
2 that have not given their appearance this afternoon and are
3 speaking? I see, Elizabeth, that you have joined.

4 MS. JONES: Yes. Hi. Elizabeth Jones of Kirkland
5 & Ellis, proposed counsel to the Debtors.

6 CLERK: Okay, thank you. And you're -- actually,
7 Mr. Nash is speaking first. Is that right?

8 MS. JONES: Yes. Mr. Nash will be joining me here
9 as well.

10 CLERK: Okay. Thank you.

11 All right, for the parties that have joined, if
12 there is anyone that has been admitted and is speaking on
13 the record this afternoon and has not given their
14 appearance, please unmute. You could raise your hand,
15 unmute, and just state your appearance for the record.

16 MR. ADLER: Yes, it's David Adler on behalf of
17 certain Celsius borrowers, and I'll be speaking today.

18 CLERK: Thank you, David.

19 Yes, good afternoon. If everyone is speaking this
20 afternoon and has not given their appearance, please do so.
21 Please raise your hands one at a time, and I will take your
22 appearances.

23 Shara, if you could unmute and give your
24 appearance, please?

25 MS. CORNELL: Hi. Shara Cornell with the Office

1 of the United States Trustee.

2 CLERK: Thank you.

3 MS. CORNELL: I'm having trouble with my video, as
4 per usual. I may have to re-log back in.

5 CLERK: Oh, that's fine. I just have a quick
6 question. Are Brian Masumoto, Linda Rifkin, or Mark Bruh,
7 are any of the above going to be joining as well?

8 MS. CORNELL: You know what? I think they may all
9 -- they may all be joining this afternoon.

10 CLERK: Okay. All right, thank you.

11 MS. CORNELL: Thank you.

12 MS. JONES: Deanna, this is Elizabeth Jones again,
13 from Kirkland & Ellis. I just wanted to let you know we're
14 setting up a conference room in New York that Mr. Nash and I
15 will be speaking from. That was the one that was just
16 subsequently added.

17 CLERK: Oh, perfect. All right, thank you.

18 MS. JONES: Of course.

19 CLERK: All right, if there's any participants
20 that are speaking this afternoon that have not given their
21 appearance, please raise your hands, and then unmute one at
22 a time to give your appearance. Yes, Deb?

23 MS. KOVSKY: Hi. It's Deb Kovsky for the ad hoc
24 group of withhold accountholders.

25 CLERK: Thank you very much.

1 All right, so I see someone in the waiting room
2 that's the exhibit technician. Is that for Kirkland? Does
3 anyone know?

4 MAN 4: -- from Kirkland. I don't believe that
5 the exhibit tech is a Kirkland line. Not sure who they're
6 affiliated with, but nobody we're expecting.

7 CLERK: Thank you. All right, the party that
8 joined as exhibit technician, can you specify who you're
9 with, which firm? If you do not unmute and give your
10 appearance, I will be forced to put you back in the waiting
11 room.

12 All right, HY conference room 37D, can someone
13 identify that party?

14 All right, for the parties that have joined, if
15 you could unmute one at a time, if you have not given your
16 appearance yet, and state your appearance for the record.
17 Yes?

18 MS. JONES: Deanna, can you hear me? We just
19 added a new room, and we're not sure how the volume is
20 working.

21 CLERK: It's perfect.

22 MS. JONES: Okay. Thank you very much.

23 CLERK: All right. You're welcome.

24 MR. PURDY: Hello?

25 CLERK: Yes, who is speaking?

1 MR. PURDY: Oh, gosh, I'm just supposed to be in
2 the waiting room. I'm a creditor.

3 CLERK: And your name, sir?

4 MR. PURDY: Frederick Bruce Purdy.

5 CLERK: Well, you've been admitted. Are you
6 speaking this afternoon?

7 MR. PURDY: No, I wasn't intending to. I'm just
8 listening.

9 CLERK: Okay, that's fine. You can mute your
10 line.

11 MR. PURDY: Oh, okay. Mute, there we go. Oops.

12 CLERK: I got it for you.

13 All right, for the parties that have joined, if
14 you have not given your appearance this afternoon and you
15 are speaking on the record, speaking not listening, please
16 unmute one at a time and give your appearance, please.

17 All right, Brian, can you hear me?

18 MR. MASUMOTO: Yes, I can hear you. This is Brian
19 Masumoto.

20 CLERK: Oh, okay, so Brian Masumoto is appearing
21 on behalf of the US Trustee. Are you speaking this
22 afternoon, or just listening?

23 MR. MASUMOTO: I'm listening.

24 CLERK: Okay, great. Thank you.

25 All right, for the parties that have joined, if

1 you are speaking this afternoon, unmute your line one at a
2 time and give your appearance for the record.

3 MS. YEILDING: Hi, my name is Ann Yeilding, and I
4 was hoping to speak briefly today. I'm a creditor.

5 CLERK: Okay, Ann, your appearance is noted. Are
6 you speaking regarding any specific motion?

7 MS. YEILDING: The examiner appointment motion.

8 CLERK: Okay.

9 MS. YEILDING: You know, I don't know what I'm
10 doing here. I'm making it up as I go along, but that's the
11 issue I am interested in.

12 CLERK: All right, so the judge will ask parties
13 one at a time if they have anything in reference to that
14 motion, so you can just wait for that cue. And of course,
15 if you're going to be speaking, please, everyone raise their
16 hands, and the judge will take the raised hands in turn.

17 MS. YEILDING: Okay. Thank you for your patience.

18 CLERK: You're welcome. I am going to mute your
19 line for now.

20 MS. YEILDING: Okay.

21 MS. CORNELL: Deanna, this is Shara Cornell. Can
22 you see my video now, please?

23 CLERK: Yes, I can.

24 MS. CORNELL: Excellent. Thank you for your
25 patience.

1 CLERK: You're welcome.

2 All right, for the parties that have joined, if
3 you are speaking this afternoon, please raise your hands. I
4 will ask you to unmute and give your appearance if you have
5 not already done so.

6 Again, for the parties that have joined, if anyone
7 is speaking on the record this afternoon, please raise your
8 hands, and I will unmute you one at a time and ask you to
9 give your appearance. Judson Brown?

10 MR. BROWN: Yes, this is Judson Brown from
11 Kirkland & Ellis. I likely will not be speaking today, but
12 out of an abundance of caution, I may be speaking today --

13 CLERK: Okay.

14 MR. BROWN: -- so wanted to enter my appearance.

15 CLERK: Understood. Thank you.

16 MR. BROWN: Thank you.

17 CLERK: Yes, Mitch Hurley?

18 MR. HURLEY: Hi, good afternoon, Mitch Hurley with
19 Akin Gump Strauss Hauer & Feld. I similarly -- I think it's
20 pretty unlikely that I'm going to need to speak, but since
21 our retention application is up, it's at least conceivable,
22 so I'm going to enter my appearance as well.

23 CLERK: Okay, thank you, Mitch. Is Dean Chapman
24 also going to be joining?

25 MR. HURLEY: Dean will not be joining.

1 CLERK: Okay, thank you.

2 MR. HURLEY: Thank you.

3 CLERK: All right. From the US -- Mr. Mark Bruh?

4 MR. BRUH: Yeah, I can --

5 CLERK: Hi.

6 MR. BRUH: Hi. How are you?

7 CLERK: Hi. How are you? Are you speaking this
8 afternoon, Mark?

9 MR. BRUH: I don't plan to. I know Ms. Cornell
10 will be doing the presentation. I don't know if she's
11 logged on yet, but --

12 CLERK: Yes, she has.

13 MR. BRUH: -- I'll note my appearance, though.
14 Thank you.

15 CLERK: Thank you.

16 Layla Milligan, are you going to be speaking this
17 afternoon?

18 MS. MILLIGAN: Good afternoon. I think I will
19 speak. We filed a joinder to one of the matters. Can you
20 hear me okay?

21 CLERK: Yes, I can. Thank you. If you could just
22 state your full appearance, who you represent.

23 MS. MILLIGAN: Yes. I'm Layla Milligan. I'm with
24 the Texas Office of the Attorney General, and I am here
25 representing the Texas State Securities Board.

1 CLERK: Thank you very much.

2 MS. MILLIGAN: Thank you.

3 CLERK: All right, Karen, I'll be back in a
4 moment.

5 WOMAN 2: Okay.

6 CLERK: All right, we are going to get started in
7 a few minutes. There are certain parties that have not
8 joined, and I just want to see if anyone from these specific
9 parties are going -- are on the line and have not given
10 their appearance.

11 I don't have anyone from Milbank on behalf of
12 Series B shareholders, to my knowledge. But if you have
13 joined, please unmute and give your appearance at this time.

14 MR. DUNNE: Yes, hi. Can you hear me? It's
15 Dennis Dunne from Milbank on behalf of the Series B.

16 CLERK: Okay, thank you. Is anyone else from
17 Milbank going to be joining with a speaking role?

18 MR. DUNNE: No, just me.

19 CLERK: Okay, great. Thank you. All right. Is
20 there anyone on from Togut?

21 MR. ORTIZ: Good afternoon, Ms. Anderson. Kyle
22 Ortiz is on, as well as my colleague, Bryan Kotliar.

23 CLERK: Okay, so who's going to be speaking first?

24 MR. ORTIZ: I will be, Kyle Ortiz.

25 CLERK: Okay. Thank you.

1 MR. ORTIZ: Thanks.

2 CLERK: All right. Is there anyone from the State
3 of Wisconsin Department of Financial Institutions? Okay.

4 Do we have anyone from Alvarez and Marsal?

5 MR. BIXLER: Yes, Holden Bixler with Alvarez and
6 Marsal.

7 CLERK: Okay, thank you. Is Robert Campagna also
8 joining?

9 MR. BIXLER: I do not believe that Robert Campagna
10 is joining.

11 CLERK: Okay, thank you. All right, is there
12 anyone from Sullivan & Cromwell? I'll take that as a no.

13 All right, is there anyone from Broad Reach
14 Consulting, LLC? All right.

15 Has Howard Seife joined from Norton Rose, the firm
16 of Norton Rose? Okay.

17 Do we have counsel from Latham & Watkins?

18 MS. RECKLER: Yes, good afternoon, Your Honor.
19 This is Caroline Reckler. My partner, John Sikora, who is
20 the declarant for our retention application, will be joining
21 and will be the primary speaker.

22 CLERK: Okay. All right, thank you. All right,
23 we'll look out for -- and Paul Silverstein? Is Paul
24 Silverstein on the line? All right.

25 Are there any additional participants? This is

1 the last call. If you're going to be speaking on the record
2 this afternoon and you have not given your appearances,
3 whether -- but you want to speak this afternoon and you have
4 not given an appearance, you can raise your hands one at a
5 time and please give your appearance on the record. This
6 includes everyone that's appeared at the -- that has joined
7 the hearing. Is there anyone that has not given their
8 appearance that is going to be speaking this afternoon?

9 I have a few brief announcements before we get
10 started. Please take note of the following: All persons
11 are strictly prohibited from making any recording or
12 reproduction of court proceedings, whether by video or
13 audio, screenshots, or otherwise. Violation of this may
14 result in sanctions.

15 All right, a few more announcements.

16 If a party is speaking, every time that they
17 speak, they have to unmute their line and state their name
18 each time they speak on the court record. As I previously
19 said, audio and video recording and everything else made in
20 the previous statement is prohibited.

21 Judge, would you like to begin, or would you like
22 to wait?

23 THE COURT: No, we can begin. Thank you very
24 much, Deana, and good afternoon to everyone. We are here in
25 Celsius, 22-10964.

1 Once again, we have a long agenda, which was filed
2 on the docket, and we'll go through the order of the agenda.
3 For the many pro se parties who have appeared today, as in
4 past hearings, if you will use the raised hand function at
5 the bottom of your screen, I will give you an opportunity to
6 speak if you are intending to speak about one of the pending
7 motions, so that's how we'll proceed.

8 MR. NASH: Good afternoon, Judge. Pat Nash from
9 Kirkland & Ellis for the Debtors.

10 THE COURT: Good afternoon, Mr. Nash.

11 MR. NASH: Your Honor, before diving right into
12 the agenda and handing the first matter over to Miss Cornell
13 and Mr. Pesce in the first instance, one scheduling item,
14 Judge.

15 When we were last in front of you, you had asked
16 the Debtors to confer with the two ad hoc groups, the
17 custody group and the withhold group, regarding scheduling
18 matters with respect to their issues and certain pleadings
19 that they had filed. And we would propose, Your Honor, to
20 address that at the conclusion of the hearing at the end of
21 the agenda.

22 THE COURT: All right. That's fine, Mr. Nash.
23 And I have some questions and some comments on that subject
24 as well. We'll put that at the end of the agenda.

25 MR. NASH: Terrific, Your Honor. And with that, I

1 turn it over to Miss Cornell and/or Mr. Pesce -- Miss Corner
2 and Mr. Pesce. Thank you, Judge.

3 MR. PESCE: Your Honor, it's Gregory Pesce, White
4 & Case, proposed counsel to the committee. Prior to the
5 hearing, Miss Cornell and I spoke and then I spoke with
6 Kirkland & Ellis. And if it would please the Court, I am
7 prepared to discuss the agreed form of order that the
8 creditors' committee filed on behalf of ourselves and the
9 U.S. Trustee at Docket 752 with respect to the examiner
10 motion and provide some context and overview of that before
11 allowing the other parties to speak.

12 But again, if Your Honor has a different order in
13 which we should proceed, just let us know.

14 THE COURT: No. Let me just state for the record,
15 the United States Trustee made a motion for the entry of an
16 order directing the appointment of an examiner. The motion
17 was filed as ECF Docket No. 546. There have been a series
18 of responses. I won't go through each of them. But some of
19 them filed by -- the committee filed and various other
20 organized groups did.

21 In addition, the Court received and has reviewed
22 some individual creditor filings. Immanuel Herrmann, for
23 example, has two filings: one at ECF 755 and the other at
24 779. There have been joinders in the motion for the
25 appointment of the examiner by a group of states, a large

1 group of states, and there actually is an additional filing
2 by Mr. Herrmann, which is ECF Docket No. 780.

3 So the Court has reviewed all of those pleadings.
4 I haven't given the number of each, but I reviewed all of
5 them that relate to the issue of the appointment of an
6 examiner.

7 Mr. Pesce, go ahead.

8 MR. PESCE: Thank you, Your Honor. Again, for the
9 record, Gregory Pesce, White & Case, on behalf of the
10 Official Creditors' Committee.

11 Since the filing of the examiner motion in mid-
12 August, as Your Honor can imagine, it has been a source of
13 incredible focus and attention for the Debtors, the
14 committee, I imagine the U.S. Trustee, and many, many of the
15 1.7 million users that used Celsius prior to the petition
16 date.

17 Prior to filing that, this wasn't a surprise for
18 the committee in two respects. First, as we greatly
19 appreciate, the U.S. Trustee did confer with us several
20 times about it and sought our input, and the committee is
21 also just not ignorant of the unprecedented facts and
22 circumstances of these cases.

23 As I mentioned, it's 1.7 million people can't
24 access their cryptocurrency. There's over \$6 billion of
25 liabilities, hundreds of letters have been filed with the

1 Court. This is a focus point of regulatory and media
2 scrutiny. The sheer number of investigations allege
3 significant potential acts of civil regulatory potential
4 criminal misconduct.

5 And there are significant questions among the
6 customer base about whether customers or account holders
7 have claims that one entity or at other entities, such as
8 the mining entity, which Your Honor has heard so much about
9 since the beginning of the case.

10 These are critical questions for which
11 transparency is absolutely imperative. The committee
12 strongly supports transparency in this case. We've taken a
13 lot of steps that we've talked about before, to ensure
14 transparency. Yet, the original scope, as we shouldn't be
15 surprised we laid out in our pleading, it was concerning for
16 the committee. The committee had been formed just two and a
17 half weeks earlier. We were already looking into nearly all
18 of those matters. There was a risk of duplication.

19 Liquidity was a significant issue. You might have
20 heard from Mr. Sussberg a few weeks ago that there was
21 originally a thought to be a need for a DIP loan at the end
22 of September. Luckily, that has come to pass and there is
23 liquidity now, it looks like, through the end of the year,
24 but that liquidity forecast is still tight. And this case
25 just simply cannot sustain tens of millions of dollars of

1 professional fees, nor could this case tolerate a standstill
2 while an examiner did a wide-ranging investigation of
3 certain matters because that would mean months or longer
4 before customers could get some type of liquidity through
5 crypto or otherwise.

6 Those risks were -- or those issues were real for
7 the committee, yet the committee also recognized that this
8 is, simply put, a special and a unique case and there are
9 truly compelling circumstances here.

10 Following the September 1st hearing, Mr.
11 Harrington, Miss Riffkin, Miss Cornell, Mr. Bruno, and
12 others, Mr. Masumoto, made themselves available extensively
13 to the committee's professionals and we began to have an
14 extensive good-faith dialogue on the scope of the examiner
15 motion in light of all the circumstances of the case.

16 As a result of those discussions, the original
17 proposed scope that's been narrowed so that it effectively
18 will cover four basic topics: where were and where are the
19 coins held and where they comingled; what is the nature of
20 the utility payments, which are significant, and has come up
21 in prior hearings for the mining business; what are the
22 procedures for the Debtors paying sales, use, and back
23 taxes, an issue that came up at the 341 meeting in
24 particular; and as will be addressed at the end of this
25 hearing, how the so-called custody and withhold programs

1 came about just 89 days prior to the petition date.

2 The UCC supported that scope. We supported the
3 60-day period that there is for a report. And while there
4 isn't an examiner yet, obviously, we expect to have dialogue
5 with the United States Trustee on that matter, and we will
6 also have dialogue, if Your Honor appoints -- orders the
7 appointment of an examiner, on their budgets to make sure
8 that the budget, the work plan, et cetera is commensurate
9 with the tailored scope of this.

10 For the committee -- and this is what I really
11 want my constituency to hear -- this struck the right
12 balance. In the month and a half since the committee has
13 been out there, the circumstances of this case, while still
14 very significant and raising important questions, have
15 changed in some important respects.

16 As I mentioned, the investigation, we've made
17 significant progress with the Debtors. They've agreed in
18 writing to cooperate with that investigation. Mr. Mashinsky
19 has his own counsel. They've likewise agreed to produce
20 information and documents. We've received over 16,000
21 documents, 63,000 pages, and importantly, we're starting to
22 get information from Mr. Mashinsky about a number of topics,
23 including his withdrawals from the platform. That
24 investigation will continue, but it is in a more advanced
25 state than it was earlier.

1 Second, the case has changed in terms of an issue
2 which you might hear more about called coin security. We
3 had concerns at the outset of the case, the U.S. Trustee had
4 concerns at the outset of the case about how many coins
5 there were, where they were held. At the committee's
6 insistence and the U.S. Trustee's insistence, the Debtor his
7 now producing a coin report. That report is obviously not
8 perfect, it's a work in process, but it's better than what
9 was there in mid-July when the case filed.

10 At the same time as we were discussing this with
11 the U.S. Trustee, we had begun having extensive dialogue
12 with the Debtors regarding cash management. We wanted to
13 make sure that their cash was secure, but more importantly,
14 we wanted to make sure their coins were secure from external
15 threats like hackers, and we wanted to make sure that the
16 coins were being protected and eventually would be used in
17 accordance with appropriate internal protocols.

18 Those discussions were very advanced, and we were
19 speaking with the U.S. Trustee and are now pleased today, as
20 you might have seen on the docket last night, to see there
21 is an agreed stipulation with the committee about how to
22 enhance the security of the coins that's going to be up on
23 October 6th, but another important piece.

24 Finally -- or rather, next, in terms of our
25 discussions with the Trustee. By the time we've been having

1 those discussions, we had made progress with the Debtors
2 regarding what is really a fundamental issue, which is where
3 the customers have claims. Do they only have claims at the
4 customer-facing entity or do they have claims in terms of
5 service, we think suggests against all of the entities,
6 including the mining entity.

7 Those productive discussions, I'm happy to say,
8 earlier today resulted in the Debtors confirming to me that
9 they will be scheduling customer claims at every entity when
10 the schedules are filed later this week. Obviously, people
11 might disagree with that, they might object, but the
12 committee, based on those discussions and particularly now
13 that they've resulted in that agreement to schedule the
14 claims, has provided the committee and customers greater
15 comfort here.

16 And then finally, you know, I won't belabor the
17 point -- we mentioned it at the prior hearing -- the end
18 game for this case is still unknown, but the parameters for
19 how that end game will be reached are becoming clearer.

20 The Debtors, this has been widely reported, met
21 with the UCC. They presented a concept. The UCC does not
22 support that concept; we don't support any end game here.
23 But more importantly, the Debtors have committed to running
24 a process to market check what is out there and whatever the
25 management team might ultimately produce. We're working

1 with the Debtors on those marketing procedures. We hope to
2 see the Debtor file them soon. We want to open a full
3 transparent process so we can see what the market provides,
4 and we can let the community respond and Your Honor can
5 eventually make a determination about whatever that results
6 in.

7 So in light of the changed circumstances here, in
8 light of what we were doing, and in light of the
9 developments here, the committee thought it was appropriate
10 to reach common ground with the Trustee. These cases are
11 already beset by huge costs. There's already innuendo and
12 gossip and commentary about who's doing what for whom. We
13 didn't think it was appropriate to have a long hearing about
14 these issues when, really, we're all talking about the same
15 thing, which is transparency. We think that scope if
16 appropriate.

17 You know, as Your Honor has seen from the
18 pleadings, certain people take issue. There is a concern
19 that the scope should be restored to its broader gambit.
20 Regulators seek to have it cover what individual state
21 regulations might provide. Some parties are seeking a
22 trustee or a CRO to be appointed.

23 And then finally, there's been a lot of conjecture
24 about the conflicts of the different professionals that are
25 raised in the case. I'm sure that'll be more fully covered.

1 Each of these -- those will all be fully covered at the
2 retention portion of the hearing. But, you know, I do want
3 the other people here to say their piece about this, but as
4 we can talk about more later on in the hearing, we don't
5 think any of these hold water.

6 The committee is already investigating the things
7 that were struck. The regulators have the ability and the
8 mandate under their state laws to look into matters. The
9 committee has made itself available to the regulators. In
10 fact, tomorrow, we're going to be joining a call with at
11 least the Texas State Attorney General and some other state
12 regulatory agencies to share the status of our investigation
13 so that we're all working for a common purpose, sharing
14 information where possible so there isn't duplication or
15 extra cost. We want to get the facts, we want to get the
16 facts out, and we want to make sure we're not hoarding them.

17 And then, you know, in terms of the suggestion for
18 a Trustee. As we said in our filing here, that requires
19 notice and a hearing. There's a significant record that
20 would be needed. That record isn't here today. And as we
21 alluded to in our filing that a Trustee is really a
22 significant step in these cases. It would signal a
23 liquidation, which is something we don't think is necessary
24 under the right circumstances here and would provide the
25 wrong incentives for parties in this case.

1 So with that, we hope this context is helpful to
2 the Court and to our constituency. I see hundreds of people
3 are listening in. We think the scope is appropriate and we
4 support the Court entering that agreed order, which I should
5 note the Debtors also subsequently agreed to, so it is
6 agreed to by the Trustee, the UCC, and the Debtor in the
7 case.

8 So with that, I'll pause. I'm happy to take other
9 questions or defer to Miss Cornell if she has any feedback
10 as well.

11 THE COURT: Let me hear from Miss Cornell, and
12 then I may have some comments I may want to make.

13 MS. CORNELL: Good morning, Your Honor. Shara
14 Cornell with the Office of the United States Trustee.

15 I just want to point out as a preliminary matter
16 that no one is currently questioning whether a third-party
17 neutral should be appointed in this case. The need for
18 extraordinary transparency is unquestioned by all the
19 parties.

20 I think that the order that we've proposed speaks
21 for itself. The examiner has to be independent. He's not
22 going to be consulting or reporting with the committee or
23 the Debtors. Obviously, an examiner that is appointed will
24 cooperate to the extent of the order, but I just want to
25 make it clear for the record that the examiner is an

1 independent party.

2 There have been some questions about the costs of
3 an examiner, and I think that those are a red herring in a
4 case like this, which just calls for such extraordinary
5 transparency. The examiner will come before the Court with
6 a work plan and a budget, which will be built into the
7 order, and it will be handled by the examiner who's going to
8 do the work, and I think it would be premature to talk about
9 a budget since we haven't even appointed anyone yet.

10 And I think that for the Court's information and
11 maybe for the other parties just to give a little bit of
12 color about the diligence that the United States Trustee's
13 Office has been doing so far. We already have close to 40
14 self-nominated parties to serve as examiner, and pursuant to
15 1104(d), we will request recommendations from the parties by
16 noon on Friday for further recommendations.

17 And we're hopeful that the interviews of these
18 potential candidates will occur next week, but we do have a
19 lot of folks to interview and it takes time and we'll move
20 expeditiously, but there are a lot of candidates. And we
21 just wanted to make sure that the Court and the parties were
22 aware of all of this as we move forward this morning.

23 THE COURT: Thank you, Miss Cornell.

24 MS. CORNELL: Thank you.

25 THE COURT: Let me give an opportunity to anyone

1 else who filed any response with respect to the examiner
2 motion. I've identified some. In addition to the various
3 state regulators who have filed, there were individuals as
4 well. I think I pointed out that Mr. Immanuel Herrmann had
5 three separate filings. I wanted to give Mr. Herrmann a
6 chance to speak if he wishes to do so.

7 MR. HERRMANN: Yes, hello. Thank you, Your Honor.
8 So first, I just want to thank Shara Cornell and the U.S.
9 Trustee's office for all of their diligence on behalf of
10 depositors.

11 Your Honor, we're here today because customers
12 were lied to and misled and now trust in the Celsius brand
13 and management team is gone. Perhaps you have seen the
14 leaked internal Celsius conversations in "The New York
15 Times" this morning.

16 Celsius has one thing in common with Pepsi and
17 Delta Airlines: It is a customer-facing company, a brand.
18 But that is where the similarities end. Unlike Pepsi and
19 Delta Airlines, or Celsius Energy Drink for that matter,
20 which actually exists as an energy drink with no relation to
21 Celsius, the crypto bank, Celsius Network, LLC is a
22 financial services company billed as essentially a
23 depository institution (sound glitch). It was described to
24 depositors as "safer than a bank," and we were told that
25 there could never be a "run on the bank."

1 Cryptocurrency was invented on the premise that
2 you don't need to trust any centralized platform or
3 institution to hold your keys. You can hold them yourself.
4 But when customers don't want to or can't hold their own
5 keys, they turn to centralized institutions like Celsius,
6 and when they do, trust and transparency is paramount, just
7 like it is with any financial institution.

8 The idea that somehow depositors are going to
9 trust Celsius after dissipating over \$2 billion in our
10 crypto clients and after they had, I will add, a "don't
11 trust, verify" logo plastered all over their website that
12 implied you could verify, similar to what they're talking
13 about doing going forward, which by the way, they've removed
14 in the run up to the bankruptcy when they did numerous
15 website edits. After calling the coins our coins pre-
16 bankruptcy, after calling our deposits "deposits", borrowing
17 "borrowing", and all of that, frankly, it just is absurd.

18 So the fact is, Your Honor, the Celsius brand and
19 the trust behind it, in my view, is gone. And I say this
20 not just as a customer, though admittedly, I'm extremely
21 disappointed because I believed Alex Mashinsky, I trusted
22 what people from the company said, and I was misled, but I
23 also say this in the context of the larger brand and the
24 management. I just do not believe that this brand or this
25 management team has value any longer.

1 But as Mr. Nash said in his first day
2 presentation, all is not lost. I believe the business does
3 have value. I believe it can survive under new management
4 as a going concern. Celsius has valuable assets, it has a
5 valuable team, and I believe that under entirely new
6 management, there can still be a future for the company,
7 even in spite of the, I would say, Ponzi-like promotion of
8 it, the fact that they were likely insolvent since 2021,
9 except for the sell token, and even though as the CFO
10 admitted at the 341 meeting, withdrawals exceeded deposits
11 apart from the money they lost in their reckless
12 speculation.

13 In spite of all that, I still believe that there
14 is a real business under the hood here. You know, I think
15 also that, you know, Alex is a great salesman, but he just
16 has shown himself to be a poor businessman, and what we need
17 now is somebody who's a good businessperson, who can run a
18 viable business. This is an unusual case where there's both
19 fraud that has to be addressed and a real business that
20 needs to be saved. I think that's pretty unusual, so, you
21 know, let's do both. That's my pitch. Let's bring in
22 competent management before it's too late, and let's also do
23 the investigations that we need.

24 I believe that there is already more than ample
25 information in the court record to appoint a chief

1 restructuring officer with the powers of a trustee, and
2 that's what I'm urging you and the Court to do. But I
3 understand that I'm just one depositor and if Your Honor is
4 not quite ready to appoint a trustee, then if you're
5 amenable, I can prepare a draft order directing Celsius to
6 build a polling feature so that the Court, the UCC, and
7 other parties in interest can gauge customer sentiment and
8 find out where customers stand on this and other important
9 matters.

10 I believe in this case gauging where customers
11 stand on issue such as this is critical because, again, this
12 is a financial services business where trust is paramount
13 and where to have a future, it would need the trust of the
14 customer base.

15 THE COURT: All right. Thank you, Mr. Herrmann.
16 Let me call on some more people and (indiscernible) as well.
17 Thank you very much for participating.

18 MR. HERRMANN: Sure.

19 THE COURT: Mr. Dunn, you need to unmute. Go
20 ahead.

21 MR. DUNNE: Good afternoon, Your Honor. For the
22 record, Dennis Dunne from Milbank, LLP on behalf of the
23 Series B Preferred, and I'll be brief.

24 I just want to raise two things, one of which is
25 that as Your Honor has seen and read, we filed a limited

1 objection because we thought the initially proposed
2 parameters were overbroad and would lead to a very expensive
3 examiner's report, but the subsequent limited scope agreed
4 to by the Debtors, the UCC, and the U.S. Trustee addresses
5 our concern. So as a result, we're not prosecuting the
6 objection today, Your Honor.

7 One last note, which is in the nature of an
8 audible, Your Honor, is I have to respond to something Mr.
9 Pesce said during his remarks, that the customer claims will
10 be scheduled at every entity. That's the first we're
11 hearing of it, and we don't know of any kind of convincing
12 evidence to support it. We haven't seen a balance sheet or
13 financial statement showing that individual claims at each
14 entity. And to our knowledge, there's no guarantee of the
15 customer debt that was signed by every entity. We
16 understood that there were some guaranties that were drafted
17 for certain, but not all of the entities with respect to the
18 customer claims, but even those were never executed.

19 So it's a long way of saying we don't know the
20 basis for the Debtors' conclusion. Not an issue for today,
21 of course, Your Honor, and we'll review the schedules.

22 THE COURT: I have enough on the table today, Mr.
23 Dunne, let's deal with the issues for today.

24 MR. DUNNE: Right. And so, we'll review that and
25 talk to the Debtors about their foundation for that, and if

1 there's a disagreement, we'll bring it to the Court.

2 THE COURT: Thank you very much, Mr. Dunne. If
3 you'd lower your hand when you finish, that would be
4 appreciated.

5 MR. DUNNE: Thank you.

6 THE COURT: All right. Mr. Frishberg.

7 MR. FRISHBERG: Thank you, Your Honor. Can you
8 hear me?

9 THE COURT: Yes, I can. Go ahead.

10 MR. FRISHBERG: Perfect. Thank you, Your Honor.
11 One of the main points that I would like to make is
12 effectively Celsius, as Mr. Herrmann had said, does have a
13 viable business model, but as he said, the current
14 management, it's not sustainable. They're spending enormous
15 amounts of money, over \$50 million a month I believe, and
16 it's just unsustainable. They're not having any revenue
17 generation and it needs to be changed.

18 Quite simply, as he put it, the brand has become
19 toxic because Mr. Mashinsky, he took all the trust that was
20 given to him and effectively threw it out the window. It's
21 not helping that his wife, Miss Mashinsky, released a t-
22 shirt saying, "bankrupt yourself," on it and then told
23 people who complained about it being insensitive to, and I
24 quote, "get over it," which I think actually damages the
25 potential recovery.

1 THE COURT: Mr. Frishberg, let me ask if you
2 would, if you would keep your remarks directed to the motion
3 that's before --

4 MR. FRISHBERG: Yes, sorry. A trustee should and
5 can be appointed because according to 11 U.S.C. 1104(a)(1),
6 a trustee can be appointed when cause exists and causes
7 consists of fraud, dishonesty, incompetence, or gross
8 mismanagement, which all have occurred here. I mean, some
9 of it's still ongoing.

10 And I believe that a chief restructuring officer
11 is in the best interest of the creditors because it will
12 allow both the chief restructuring officer trustee to
13 restore liquidity while investigating claims such as an
14 examiner would be. It would significantly decrease the cash
15 burn, I believe, once we get a potential of crypto executive
16 or somebody to start addressing the ongoing issues of the
17 extremely high spending and lack of income.

18 As Mr. Herrmann has said, more transparency would
19 be necessary. I don't think anyone would agree that Celsius
20 should be liquidated, but some people may want it. But I
21 think everyone has stated that it should be saved, but I
22 just don't think it's viable in its current form. And
23 according to the case Silverman, the Court is required to
24 appoint a Chapter 11 trustee once a finding of cause has
25 been made.

1 THE COURT: Thank you very much, Mr. Frishberg.
2 Let me point out and I think this was already emphasized by
3 Mr. Frishberg, there has been no motion filed for the
4 appointment of a Chapter 11 trustee. What the Court has
5 before it is the motion for the appointment of an examiner.
6 Under Section 1104(c), if the Court does not order the
7 appointment of a trustee under the section, then at any time
8 before the confirmation of a plan on the request of a party
9 in interest or the United States Trustee and after noticing
10 a hearing, the Court shall order the appointment of an
11 examiner to conduct such an investigation of the Debtor as
12 is appropriate, including an investigation of any
13 allegations of fraud, dishonesty, incompetence, misconduct,
14 mismanagement, or irregularity in the management of the
15 affairs of the Debtor of or by current or former management
16 of the Debtor. It goes on from there. I'll stop there.

17 But Miss Milligan, do you want to be heard?

18 MS. MILLIGAN: Yes, Your Honor, thank you. Layla
19 Milligan with the Texas Attorney General's Office, appearing
20 on behalf of the Texas State Securities Board. Thank you
21 for allowing me to speak today.

22 First, I would like to thank Mr. Pesce and the
23 committee counsel and the U.S. Trustee and all of the
24 parties that have worked to reach a consensus regarding this
25 motion to appoint an examiner. We did file a joinder at

1 Docket No. 732 and have reviewed the agreed order that was
2 proposed and filed at Docket No. 752.

3 We had initially some concerns regarding the scope
4 but had communications with the committee and continue those
5 discussions. I would further note that the proposed order
6 provides for the allowance of parties in interest to seek
7 permission to expand the scope as becomes necessary in the
8 course of the examination and allows for the examiner to
9 cooperate and coordinate with state regulatory bodies, which
10 we think is appropriate and is appreciated.

11 So we do not oppose the entry of the proposed
12 agreed order and, again, appreciate the efforts to get to
13 this point.

14 THE COURT: Thank you very much, Miss Milligan.

15 MS. MILLIGAN: Thank you, Your Honor.

16 THE COURT: Mr. Adler.

17 MR. ADLER: Good afternoon, Your Honor. David
18 Adler from McCarter & English on behalf of certain Celsius
19 borrowers.

20 As we indicated in our pleadings, this motion or
21 this response is filed by four borrowers, all of whom posted
22 collateral at Celsius and took a loan against it; that is
23 the people that I am filing this objection on behalf of.

24 I understand, Your Honor, that what you stated
25 earlier, which is there is no motion in front of you to

1 appoint a Chapter 11 trustee. Obviously, our concerns
2 initially were the fact that an examiner would take time,
3 cost a lot of money, and we would be left at the end of that
4 examination process with who would be bringing those claims,
5 and we still have that issue, I believe, floating around in
6 this case.

7 So yesterday, we filed a partial joinder; it's
8 Docket No. 799. We joined in Mr. Herrmann's pleading
9 partially, but we felt that the scope of the examination
10 should include the tether issue and whether the \$750 million
11 intercompany revolver shifted or could shift recoveries from
12 deposits to preferred shareholders. And the concern that we
13 have is that committee counsel would not be able to
14 investigate that issue given its prior representation of the
15 preferred shareholders.

16 So while we're not objecting to White & Case and
17 we think they've done a very good job thus far, we do have
18 concerns about when we get to the end of this process who
19 will be bringing these claims for fraud.

20 As we also stated in the joinder -- and I think
21 this is really sort of the fundamental question here -- is,
22 if you look at the July 29th coin report, it indicates that
23 there are 6.673 billion in crypto deposits made by customers
24 and there's only 3.828 billion in crypto assets available at
25 Celsius, which is another way of saying the Debtors are

1 short 2.845 billion in coin. And so, we would ask that the
2 examiner investigate where, when, and how the Debtors
3 dissipated the 2.845 billion in crypto, which is reflected
4 on the July 29th report.

5 I think that's sort of the fundamental question
6 here that everyone is asking is where did the crypto go?
7 How was it used? And, you know, I tried to sort of distill
8 two of Mr. Herrmann's points to get to that sort of global
9 question of what happened to the funds.

10 I don't know if Your Honor has any questions for
11 me on what we've asked for. But if you don't, Your Honor,
12 I'm completed.

13 THE COURT: Thank you, Mr. Adler. So I've
14 reviewed the proposed order with the changes that have been
15 made and there is one addition that the Court will make to
16 the order. A new Paragraph 16 will read as follows:

17 "Once the examiner is appointed, the examiner and
18 the examiner's professionals shall consult with the
19 committee, the Debtors, and the United States Trustee and
20 review the pro se filings related to the motion to consider
21 whether any revisions to the scope are appropriate. Any
22 proposed revisions to the scope should be included in an
23 application to the Court to amend this order." That's the
24 change.

25 In Paragraph 3 of the proposed order, it sets

1 forth the scope in five subparagraphs. Once the examiner --
2 once he or she is appointed and they consult with the major
3 constituencies, it may well be that the examiner believes
4 there should be some change in the terms of this order, the
5 scope. And obviously there's going to be a work statement
6 that's done and obviously budgets.

7 But until -- and I certainly, you know, observe
8 and respect the work that the committee and the U.S. Trustee
9 and others have done to date, I thought that some of the
10 issues raised in the pro se filings that I read raised very
11 good questions and I want to be sure that those questions
12 are appropriately reviewed. The question may be whether the
13 committee should do that or whether the examiner should do
14 that.

15 So the form of the order that was submitted, I
16 find acceptable with the change that I've added this new
17 Paragraph 16. The Paragraph 17, which gets renumbered but
18 was in the original as submitted is, "The Court shall retain
19 jurisdiction with respect to all matters arising from or
20 related to the implementation of this order."

21 So with the change that I've described that order
22 will be entered. And it's obviously up to the U.S. Trustee
23 -- I'm sure that you'll consult with other parties in
24 interest and select an appropriate person as the examiner.

25 All right, let's move on in the agenda then.

1 Thank you very much to everybody who's spoken on this
2 important issue.

3 Next on the agenda is the sealing motion and the
4 Debtors' ex parte motion, pursuant to Section 107 of the
5 Bankruptcy Code, was filed as Docket No. 344. It has many
6 permutations here. It comes up with respect to retention
7 applications and other matters as to which sealing is
8 sought.

9 At the last hearing, I encouraged the committee,
10 the U.S. Trustee, and the Debtor to confer. I raised at
11 that hearing the issue of possible redaction of physical
12 addresses, email addresses, phone numbers of individual
13 creditors, and the possible impoundment of those lists. But
14 I had serious reservations, which I continue to have, with
15 respect to not disclosing the names of creditors, not
16 disclosing creditors outside the U.S.

17 So I do want to hear -- and I've seen the
18 additional filings that have been made. There obviously has
19 not been an agreement reached among the parties. The U.S.
20 Trustee, as I understand it, continues to object to the
21 motions to seal and I do want to hear argument about the
22 sealing now.

23 MR. NASH: Your Honor, with your permission, I
24 will hand the podium over to my colleague, Miss Elizabeth
25 Jones, to handle this matter.

1 THE COURT: Thank you.

2 MS. JONES: Thank you, Your Honor. Elizabeth
3 Jones of Kirkland & Ellis on behalf of the Debtors.

4 Your Honor, yes, that's correct, we did confer
5 with all the parties. Before getting into that, if it's
6 okay with you, I would just like to move our additional
7 declaration into evidence at the start.

8 THE COURT: Please, go ahead.

9 MS. JONES: Thank you. Your Honor, in addition to
10 the declaration that we filed in connection with Docket No.
11 344, we filed a supplemental declaration of Mr. Holden
12 Bixler of Alvarez and Marsal of North American as Exhibit A
13 to Docket No. 782. At this time, we propose to move his
14 declaration into evidence in lieu of live testimony. And
15 we're currently not aware of any intent to cross-examine or
16 to object to his declaration, although he is here in case
17 that comes up.

18 So with that, Your Honor, we'd like to submit the
19 declaration of Mr. Bixler attached as Exhibit A to Docket
20 No. 782 into the record.

21 THE COURT: Is there any objections to the Court
22 admitting in evidence for purposes of this hearing the
23 Bixler declaration, ECF Docket No. 782, Exhibit A?

24 MS. CORNELL: Yes, Your Honor. This is Shara
25 Cornell on behalf of the Office of the United States

1 Trustee. I have an objection to the admission.

2 THE COURT: And what is your objection?

3 MS. CORNELL: There's no evidentiary basis for
4 this declaration. The basis that's been provided by the
5 Debtors is arguably hearsay, if not all hearsay, and I think
6 that if the Debtors would like to have that information on
7 the record that they would need to put him on the stand.

8 THE COURT: All right. Any other objections? All
9 right. The Court is going to overrule the objection and
10 admit the Bixler declaration, Exhibit A to ECF 782 into
11 evidence and give it only so much weight as the Court
12 believes it deserves.

13 (HOLDEN BIXLER DECLARATION ADMITTED INTO EVIDENCE)

14 MS. JONES: Understood. Thank you, Your Honor.
15 There is one more declaration as well that the committee has
16 proposed, which goes to one of your questions about the
17 names. You know, I'd defer to you if you would like the
18 committee to move that declaration into evidence at the
19 start and address those concerns as well or if you would
20 prefer to do that at a later time.

21 THE COURT: We can get the evidence that's being
22 offered in support of sealing. If the committee wants to
23 offer it, go ahead.

24 MR. HERSHEY: Thank you, Your Honor. Good
25 afternoon. Sam Hershey from White & Case on behalf of the

1 Official Committee of Unsecured Creditors.

2 Your Honor, I am joined in the virtual courtroom
3 today by Mr. Maxwell Galka. Mr. Galka submitted a
4 declaration in support of the Debtors' motions and the
5 committee's joinder to those motions. That declaration is
6 at Exhibit A to Docket No. 785, and I would like at this
7 time to move Mr. Galka's declaration into evidence.

8 THE COURT: All right. Any objections?

9 MS. CORNELL: Yes, Your Honor. This is Shara
10 Cornell with the Office of the United States Trustee again.

11 The issue with this proffer is similar to the one
12 advanced by counsel for the Debtor. In particular in this
13 case, I don't understand the purpose this witness serves for
14 relevance. The witness is not an expert or a fact witness,
15 then why is he testifying or offering any information. I
16 just don't understand what relevance this has in this court
17 if he isn't a fact or an expert witness, then what is.

18 THE COURT: The objection is overruled. The Galka
19 declaration is admitted into evidence for as much weight as
20 its entitled to.

21 (MAXWELL GALKA DECLARATION ADMITTED INTO EVIDENCE)

22 MS. CORNELL: Thank you, Your Honor.

23 THE COURT: Let's hear the argument in support of
24 the sealing.

25 MS. JONES: Thank you, Your Honor. With respect

1 to your earlier questions, we did meet and confer with the
2 committee and with the two ad hoc groups and the U.S.
3 Trustee.

4 We understand your argument and your concerns --
5 sorry, not your argument -- your concern, Your Honor, with
6 the names of certain creditors. And we did go back and
7 really look at, especially with respect to the GDPR, what we
8 may or may not be able to do there. But at this time, Your
9 Honor, given that --

10 THE COURT: You'll deal with what I tell you you
11 have to do.

12 MS. JONES: Exactly, Your Honor. That was our
13 point, is that we felt that it was important for us to
14 preserve our request on the record, but that, of course,
15 whatever you ultimately rule, we will abide be and we have
16 no issue with that. It was just on our basis, Your Honor,
17 we felt that it was important for us to preserve that
18 request.

19 THE COURT: Let me ask you some questions, Miss
20 Jones. No one's addressed these issues in any of the papers
21 that have been filed.

22 Bankruptcy Rule 3003(b)(1) provides that the
23 schedule of liabilities filed pursuant to Section 521(1) of
24 the code shall constitute prima facie evidence of the
25 validity and amount of the claims of creditors, unless they

1 are scheduled as disputed, contingent, or unliquidated.

2 I'll stop my reading there.

3 But I'm going to move on to 3004(c)(2), who must
4 file. Any creditor or equity security holder whose claim or
5 interest is not scheduled or scheduled as disputed
6 contingent or unliquidated shall file a proof of claim or
7 interest within the time prescribed by (c)(3) of the rule.
8 I'll stop reading there.

9 So, you know, Mr. Pesce started by saying there
10 are 1.7 million people who can't access their crypto assets.
11 The Mashinsky first day declaration described over 50,000 --
12 no, over 200,000, excuse me, Celsius customers with active
13 accounts with over \$100 in the account.

14 The claims allowance process in bankruptcy was
15 designed and works best when creditors file schedules
16 identifying their creditors by name and the claim amount,
17 which the Debtors also seek to seal. This is important
18 because creditors can look at the schedules and see whether
19 their claim has been listed -- whether it's undisputed
20 claim, in which case, they don't have to file a proof of
21 claim.

22 Do you expect 1.7 million people to file proofs of
23 claim because they don't know whether they have a disputed
24 claim?

25 MS. JONES: No, Your Honor, and I'm happy to walk

1 you through the process that we proposed specifically with
2 that, and I know this gets to one of the other later
3 redaction requested with the anonymized number.

4 But with respect to that process -- and this,
5 again, is in connection with the email noticing -- is that
6 we will send individual emails and notifications to every
7 1.7 account user, both to their web account and their email,
8 that informs them of the amount that their claim has been
9 scheduled and provides them with that number so that they
10 can go on to Stretto's website and crosscheck that number on
11 their own and confirm.

12 In addition, we're going to be setting a --

13 THE COURT: How do they go on Stretto's website
14 and confirm it if it's under seal?

15 MS. JONES: So this is why we would propose to
16 file these schedules with the anonymized number in lieu of
17 the names. That would be essentially the sealed version, is
18 that it would use account number -- well, it'd be a number
19 that we've given, so 123456, in connection with the balance.
20 They can check and confer to see both if that number matches
21 what it currently says in their Celsius account, as well as
22 the email they received, as well as if that matches the
23 schedules and statement.

24 In addition, we'll be setting up a process that
25 any individual creditor can email Stretto and say this is my

1 email, can you please confirm what my account has been
2 scheduled at.

3 And so, we have a couple of different process.
4 Both will proactively reach out through email and app
5 notification, but also provide a way for those individual
6 customers to reach out and say, I've looked, I can't find my
7 number, or I never received an email that had a number I
8 need to confirm, and if I haven't been scheduled or don't
9 have it, I'm going to file a proof of claim.

10 THE COURT: Where in your papers do you explain
11 what you just did now?

12 MS. JONES: When we filed our request for
13 anonymized process, we hadn't yet detailed that. We
14 intended to lay that all out in our bar date motion as well
15 to explain how parties would go about filing and submitting
16 their proofs of claim and crosschecking with schedules and
17 statements.

18 THE COURT: You haven't filed anything that told
19 me what you just said to everybody who's listening; is that
20 correct?

21 MS. JONES: That's correct, Your Honor, and we
22 would be happy to file a supplemental pleading and
23 declaration today if that would be helpful.

24 THE COURT: So part of the purpose of having
25 public schedules is that not just each individual creditor,

1 but creditors in general and the public have complete --
2 that there's complete transparency so that others can review
3 those schedules.

4 I said at the last hearing, while I haven't yet
5 ruled, I don't have a particular problem about sealing
6 physical residence addresses, email addresses, telephone
7 numbers of individual creditors. Bankruptcy Code Section
8 10141(a) in defining personally identifiable information
9 includes that. It doesn't include names as well. But most
10 of your papers have focused on the issue of customer lists.
11 What I'm focused on is creditor lists. In many cases,
12 customer lists and creditor lists are different.

13 It seems to me that -- and this your papers didn't
14 really address -- is the importance of transparency of who
15 the creditors are, how much their claims are.

16 MS. JONES: Yes, Your Honor. It's correct that in
17 most cases, customers and the creditors are different, which
18 makes this a little unique is that almost all of the
19 Debtors' creditors are their customers, which in this
20 circumstance, we do believe that there is a very, very
21 severe and real security risk to disclosing names and
22 account balances; that, while it is not a perfect solution
23 or ideal, we do think that that overrides the need to let
24 other individuals cross-reference the names and accounts for
25 holdings.

1 We understand again that there is a need for
2 transparency here, but we are very concerned that these
3 individual will be targeted both with physical and online
4 violence. And in this circumstance, we felt that the
5 balance of the harms weighed in favor of providing a way for
6 individuals to confirm and check their own amounts.

7 THE COURT: But why do you think this issue, the
8 issue of physical safety, there are lots of big cases, there
9 are lots of claims filed, creditors are identified. How do
10 I draw the line, how does any bankruptcy judge draw the
11 line? You're trying to rewrite the code to allow for
12 schedules to be anonymized, to omit claim amounts. You want
13 to rewrite the code.

14 If I approve it here, the next case, I'm sure they
15 will be seeking to do the same thing. It totally turns
16 upside down what has been a very public and transparent
17 claims allowance process.

18 MS. JONES: Respectfully, Your Honor, I don't
19 think we're -- we are not trying to redact account balances
20 themselves, so we do believe that those numbers should be
21 put out there. And we don't feel here as though we're
22 trying to rewrite the code, but rather to work within the
23 provisions that we can seek the right to redact information
24 where public undue risk of identify theft and other harm.

25 THE COURT: How does putting someone's name out

1 there create an undue risk of identify theft? Every case I
2 have includes lots of schedules, individuals' businesses,
3 and no one has made the argument that by putting their names
4 on a schedule, you create a risk of identity theft.

5 What evidence do you have to support that
6 argument?

7 MS. JONES: Sure, Your Honor. It's more the names
8 in connection with the account balances and it's not just an
9 individual name alone. And the reason why here is that
10 these account balances are not a -- it's a little bit unique
11 here in that these accounts represent an asset that is
12 easily hacked and broken into and it's not necessarily a
13 claim of the --

14 THE COURT: How does an account balance make an
15 account easily hacked?

16 MS. JONES: I'm sorry, Your Honor. You cut out
17 part of the question.

18 THE COURT: How does an account balance listed in
19 the schedule make an account easily hacked?

20 MS. JONES: An account balance in connection with
21 a name provides the roadmap for hackers to locate those
22 individuals and essentially -- I mean, there are -- we have
23 provided -- I understand the evidence point. We provided
24 examples of individuals being held at gunpoint until they've
25 provided a passcode to their assets.

1 And so, there is a different risk here associated
2 with providing an account balance that signals that there is
3 thousands or millions of dollars' worth of assets held by an
4 individual that could indicate to other hackers and other
5 individuals that these account balances are similar to what
6 are held on other accounts or that there might be
7 cryptocurrency held in cold storage or that this individual
8 has assets in their home that they can then be essentially
9 physically harmed until the release access to get those
10 assets, which is different than if you are alleging that the
11 debtor owes you money for failing to adhere to some sort of
12 contract or other agreement. This is a physical asset that
13 could be broken into.

14 THE COURT: It's not a physical asset; that's
15 number one. And I don't see how this differs from any other
16 case where creditors are required to have their names
17 identified, to have their claim -- the amount that the
18 Debtor schedules as their claim.

19 Why is it any different from the opioid cases or
20 any of the mass tort cases in bankruptcy? And I haven't
21 seen where courts have permitted redacting of schedules of
22 claimants in those cases.

23 MS. JONES: We understand, Your Honor. Our
24 position, as set forth in --

25 THE COURT: In any of the mass tort cases, have

1 courts permitted the sealing of schedules that list the
2 claimants and amounts of claims?

3 MS. JONES: Your Honor, I'm not aware of that, but
4 I do know in many of the mass tort cases, the amounts are
5 not scheduled because they're usually contingent and the
6 liabilities --

7 THE COURT: They're unliquidated. They're usually
8 unliquidated.

9 MS. JONES: Correct, and there is usually a --
10 many of those cases do have a confidential claims process to
11 that those claims are not publicly filed on the docket and
12 that individuals can submit their information with the
13 assurance that that will not be made publicly available. So
14 there is that process that takes place and that coupled with
15 not listing a dollar amount next to what their claims are is
16 a little bit different from this circumstance.

17 Because we do know the cryptocurrency holdings, we
18 can't put that as an unliquidated and give people the same
19 protection there. But that does provide a protection in
20 many of the mass tort cases that is essentially what we're
21 trying to do here and allow people to have that privacy
22 while still participating in the bankruptcy process.

23 THE COURT: Anything else you want to say?

24 MS. JONES: No, Your Honor, unless you have any
25 further questions.

1 THE COURT: Let me ask you, sealing issues also
2 arise with respect to retention applications. Are you going
3 to address that or is someone else going to do it?

4 MS. JONES: I'm happy to address that, Your Honor.
5 With respect, we're still on the position that if it is
6 under the GDPR, the name should be redacted; that's our
7 request. We are prepared to file unredacted -- it's only
8 names of individuals with respect to GDPR that we're
9 currently requesting with our schedules and statements, but
10 we are prepared to file unredacted if that how the Court
11 prefers it to be done.

12 THE COURT: All right. Anybody else who wants to
13 speak in favor of sealing? Mr. Wofford, are you going to
14 speak in favor?

15 MR. WOFFORD: Yes, Your Honor. Thank you very
16 much.

17 First of all, Your Honor, look, we recognize that
18 this is a departure from the traditional rule and the
19 general rule in American courts of transparency and openness
20 in public filings, but to respond directly to some of the
21 questions that you raised with Ms. Jones as to the
22 committee's position.

23 Look, as the statute notes, the discretion of the
24 Court to seal portions of the filings has to do not just
25 with respect to identity theft, but also other unlawful

1 injury to the account holders or to their property, not just
2 physical violence, but also to their property. So certainly
3 there's a legal ability of the Court to do so if the Court
4 is convinced, which in fairness, it's clear that you're not
5 yet.

6 In that regard, I would call your attention, Your
7 Honor, to Mr. Galka's testimony and particularly the fact
8 that Mr. Galka is here and available to answer your
9 questions. Mr. Galka has worked with and currently works
10 with law enforcement agencies on these sorts of matters and
11 his affidavit details the methods and the means by which
12 malice actors try to invade customer property and
13 potentially persons to get to their crypto.

14 Now, before you either take or do not take the
15 opportunity to ask Mr. Galka questions, I do want to respond
16 to one question you did ask, which is why is this different
17 from other cases.

18 And, Your Honor, this is different because of the
19 nature of cryptocurrency, and it's a little bit of a
20 conflict or an oxymoron or a tension; it's an intangible
21 bearer asset. You know, it's not like a bank account where
22 there are checks and protections and an institution that
23 protects your property. Here, if someone has the keys or
24 can get those keys, they have the ability within minutes to
25 drain someone's account. And this, again, is detailed in

1 Mr. Galka's affidavit and declaration.

2 I think at this point, because we do feel that --
3 and this is a very serious matter, Your Honor. We obviously
4 do believe in transparency, but we do believe that this
5 increases the risk to tens, if not hundreds, of thousands of
6 account holders. So if you can indulge me, Your Honor, if
7 the Court has questions about how this can actually happen
8 or if you believe that the potential harms raised by the
9 broad disclosures without any redactions required by the
10 code, then I would encourage you to ask Mr. Galka those
11 questions because he does have first-hand experience in the
12 sorts of things to which our customers will be subjected.

13 THE COURT: I read his declaration. I don't need
14 to do more (sound drops).

15 MR. WOFFORD: Fair enough. Fair enough. Then let
16 me just conclude with argument, Your Honor, as to what
17 should be redacted versus not. We welcome the Court's
18 suggestion that it would consider redacting names and
19 addresses and email addresses. But the names themselves --

20 THE COURT: I didn't say names.

21 MR. WOFFORD: I'm sorry, forgive me. Email
22 addresses and phone numbers and physical addresses. But I
23 was going on and the reason I made the mental slip there,
24 Your Honor, was I wanted to address the name issue because
25 we dealt with it in our papers and in Mr. Galka's argument.

1 We admit that the names are not exactly the same
2 and that the names are a greater tension with the rules set
3 forth in the code. But the fact of the matter, Your Honor,
4 is that the name is not just like a name in a phonebook
5 standing alone. It is the name in combination with the
6 knowledge that these folks are cryptocurrency holders; that
7 means they are likely to have other cryptocurrency accounts.
8 They may have offline wallets. They may have crypto on
9 other platforms. And even in the case of the statements of
10 90-day transfers, we will be identifying people who were
11 sent crypto by the Debtors in the runup to the case. So
12 we're directly identifying those holders as people who could
13 be targeted by what we know are groups who are trying to do
14 it.

15 And so, Your Honor, you asked why there is an
16 undue risk of injury to persons of their property based on
17 unlawful activity. It is clear to us, Your Honor, that
18 these disclosures would enhance that. To the extent we can
19 get some redactions but not all, that is good, but we don't
20 think it does enough.

21 And, frankly, Your Honor, we ask your indulgence
22 in this matter because it is so serious. And, look,
23 everyone's been subject to harassment technologically. We
24 feel that if the Court is made comfortable with respect to
25 the Debtors' process of anonymous identification -- that if

1 the Court's comfortable with that process, that the motion
2 should be granted with respect to the motion to redact
3 names, as well as the motion to redact PII.

4 Thank you, Your Honor.

5 THE COURT: Thank you. Miss Kovsky.

6 MS. KOVSKY: Thank you, Your Honor. Deb Kovsky
7 for the ad hoc group of withhold account holders.

8 At the last hearing, you had asked me what the
9 withhold account group's position was on the redaction of
10 names, and I had said that we'd basically given up on that
11 point at least for the members of our group since we did
12 file a 2019 motion.

13 However, I do want to point out that that was a
14 choice that was made by the members of my group and it's a
15 choice that's not being made by tens or hundreds of
16 thousands or millions of other account holders who did not
17 anticipate having their personal information publicly
18 displayed.

19 I also want to echo what Mr. Wofford was just
20 saying about the 90-day withdrawals, and that's something
21 that we had not spoken about at the last hearing, but it is
22 something that we addressed in our joinder that we filed.

23 If the Court requires the identification by name
24 and amount, all of the crypto that was taken off of the
25 platform in the 90 days prior to the petition date, that is

1 drawing a roadmap for thieves and other wrongdoers to
2 basically target those people. And Your Honor had said,
3 well, these are not physical assets. The reality is many,
4 many people who have taken cryptocurrency off of online
5 exchanges have put them into physical hard wallets. It's
6 basically, like, the size of a USB drive that is sitting in
7 their desk drawer at home, so these are --

8 THE COURT: You're telling me it may be plausible,
9 but it's entirely speculation unsupported by evidence.

10 MS. KOVSKY: Well, Your Honor, the case law does
11 indicate that a risk doesn't have to have actually happened
12 in order for it to be taken into account by the Court
13 because you're, by definition, talking about future events
14 that haven't happened yet. And, in fact, if we look at some
15 of the past history that have been reported in the news --
16 and I think these were referenced in the Debtors' papers --
17 there have actually been home invasions of, you know,
18 exactly the type that we're trying to prevent with respect
19 to the customers in this case.

20 So while we -- you know, we don't take a position
21 on the identification of the names in the schedules -- you
22 know, certainly with respect to our group we've already
23 identified everyone by name -- but we would encourage the
24 Court to take very seriously the risks faced by individuals
25 who have taken crypto off the platform. And if there is a

1 way to extend some protection to them, we believe that it's
2 appropriate. And, you know, it goes without saying that, of
3 course, we support the redaction of the email addresses and
4 home addresses.

5 THE COURT: Let me say first, Miss Herrmann -- I'm
6 sorry, Miss Kovsky. I do take risk to physical safety very
7 seriously. I don't mean to underestimate that at all. But
8 I also take seriously the requirements of the Bankruptcy
9 Code and the openness and transparency of bankruptcy
10 proceedings. I understand it's a balance but let me leave
11 it at that.

12 Mr. Herrmann.

13 MR. HERRMANN: Yes, Your Honor. I just wanted to
14 echo what Mr. Wofford and Miss Kovsky said. I agree
15 completely with everything they said. And then also I just
16 wanted to ask your indulgence that nothing be filed in the
17 Court record that contains my home address as a pro se
18 filer.

19 THE COURT: Look, I've already -- I haven't ruled,
20 but I've made it pretty clear that with respect to physical
21 home addresses, email addresses, personal telephone numbers,
22 I don't have a problem about that being redacted.

23 MR. HERRMANN: Yes, thank you, Your Honor. I'm
24 actually speaking about my personal pro se filings, that if
25 there was any kind of service of your order or something.

1 THE COURT: Mr. Herrmann, your pro se filings get
2 filed on the docket. I don't remember whether -- your name
3 is certainly there. I don't remember --

4 MR. HERRMANN: I didn't provide my address, so I
5 just wanted to make sure.

6 THE COURT: I haven't raised -- you know, no one's
7 raised an issue about that.

8 MR. HERRMANN: Okay.

9 THE COURT: You've appeared before, and you appear
10 today. I'm happy to hear pro ses have a chance to speak and
11 express their views and I hope to continue to do that in
12 this and future hearings. But I think it's a different
13 issue than what the purposes of schedules are in a
14 bankruptcy case. Let me leave it at that.

15 All right. Miss Cornell.

16 MS. CORNELL: Thank you, Your Honor. Shara
17 Cornell of the United States Trustee again.

18 I think the bottom line is that the evidence
19 presented does not establish that there's a threat, let
20 alone credible threats, or harm in this case. Over 250
21 creditors have already filed claims with names and
22 addresses. Over 350 letters have been filed on the docket
23 with names. Appearances in this court case and at the 341
24 meetings have names. We have ad hoc committees identifying
25 their members in the 2019 statements.

1 And there has been no showing, thus far, by any
2 part that any of the individuals that have self-identified
3 have been the target of any of the acts the committee or the
4 Debtors argue is imminent upon disclosure.

5 I'm sympathetic to the concerns expressed, but
6 there's simply no evidence presented by any party that these
7 are concrete and discernible threats that upon disclosure
8 will occur to creditors. Other than to Alex Mashinsky, who
9 already has a security detail and whose address is not
10 disclosed, there have been no actual reported threats, just
11 speculation.

12 As we have told the Debtors on numerous occasions,
13 all threats of physical harm in this bankruptcy case should
14 be forwarded to my office for review -- we take those types
15 of threats very seriously -- and, to date, we have not
16 received any such threats.

17 The Debtors already spend money to protect
18 Mashinsky. I do not think that the attachments related to -
19 - I'll just leave it at that. I don't think that that's an
20 issue in this case, and I think that it was meant for a
21 distraction.

22 And specifically with respect to the retention
23 applications, all parties in interest need to be evaluated.
24 If you don't think the conflict is one that needs to be
25 addressed, the whole process of retention involves a check

1 for conflicts, which the parties are ignoring. How do you
2 get around the issue; how do you cure it if you don't even
3 know who's involved? We need to know who is being conflict
4 checked. The parties need to disclose that information to
5 the public.

6 And even assuming, you know, arguendo that the
7 evidence attached to the supplemental briefings did show
8 some type of credible threat, which they do not, the Debtors
9 and the committee have only attempted to show threats
10 against specific individuals who we aren't even sure are
11 actually creditors. We haven't seen anything against the
12 creditor body as a whole. There has absolutely been no
13 authentication about who is making threats, who is allegedly
14 being threatened.

15 Again, we don't even know if the people that are
16 posting on Reddit are actually creditors in this case.
17 Moreover, the posts that were attached don't even all
18 support the Debtor and the committee's position. There are
19 -- in the attachments alone, there are at least two threads
20 that support the United States Trustee's position that
21 transparency and disclosure should be followed in this case.

22 And I'm happy to point Your Honor to those
23 examples if it would be helpful, but there is correlation
24 with the customers in this case. And even posting an
25 article from several years ago, it also has no correlation.

1 Randomly throwing out these happenstances does not create a
2 connection to this specific case. And just as we saw at the
3 last hearing, there is just simply no evidence -- there's no
4 evidence.

5 And I'd also like to just briefly touch, Your
6 Honor, on the European issues that I don't think that the
7 Debtors have equally expanded upon since our last hearing.
8 There are exceptions to the GDPR rule out there that I don't
9 believe the Debtors have explored or have provided to the
10 Court. I think that there should be more of an explanation
11 to this Court as to why those exceptions have not been
12 explored or even identified. And if not, in any event, to
13 the extent U.S. bankruptcy law and the GDPR conflict, the
14 application of U.S. law should prevail.

15 The Debtors are a U.K. company. They chose to
16 file in the United States of America for bankruptcy. They
17 chose that knowing the law in the United States. They have
18 consciously subjected themselves to American bankruptcy law
19 over European insolvency law and that Debtors have simply
20 not addressed why a court order or a U.S. statute does not
21 apply, and I think that also should be addressed.

22 And I would like to note, you know, before I hand
23 it over, Your Honor. We did meet and confer with both the
24 Debtors and the committee after the last hearing, and both
25 parties were unwilling to budge in their position. So I

1 just want to put that out there that we heard Your Honor at
2 the last hearing and there was no movement on behalf of the
3 committee and the Debtors.

4 THE COURT: Let me, just so I understand, what is
5 the U.S. Trustee's position with respect to redaction to
6 remove -- for individuals, not businesses -- to remove
7 physical addresses, email addresses, telephone numbers, to
8 remove that.

9 MS. CORNELL: Your Honor, I have heard your
10 concerns. The United States Trustee's Office has heard your
11 concerns, both at last hearing and at this hearing with
12 respect to the addresses and email addresses, and at this
13 time, I take no position with respect to those. I do
14 believe that the names must be disclosed, especially with
15 respect to the retention applications.

16 THE COURT: All right. Thank you, Miss Cornell.

17 MS. CORNELL: Thank you. Does anyone wish to
18 address the issue of the retention applications? I'm going
19 to take the whole thing under submission. This has gone on
20 and I wish you were all able to have reached agreement. You
21 couldn't. I will resolve these issues in an opinion.
22 Hopefully, it'll be sooner than later, but this is
23 important. I'm sensitive to the security and personal
24 safety issues.

25 You know, the Debtor has frankly changed its tune.

1 Its original pitch was 90 percent based on confidential
2 commercial information. I've stopped hearing about that and
3 now all I'm hearing about is 107(c) physical safety. Well,
4 let me leave it at that.

5 I want to hear -- I see hands raised, but what I
6 want to hear are from any of the professionals who wish to
7 speak in support of redaction of names in retention
8 applications. Is there anybody who wants to be heard on
9 that?

10 MS. JONES: Your Honor, Elizabeth Jones from
11 Kirkland & Ellis on behalf of the Debtors. If I just may
12 note, we do have a process in place there that if parties
13 would like to see the schedules, all they have to do is ask.
14 We have that in our proposed order and, yes, we understand
15 that that is slightly different.

16 THE COURT: Miss Jones, maybe you misunderstood my
17 question. What's the basis for sealing names from retention
18 applications? Those are voluntary applications and
19 professionals who wish to be retained. The rules require
20 disclosure of all of those contacts and relationships.
21 They're used for the purpose of evaluating conflicts.

22 I've commented on this before in an opinion in
23 Motors Liquidation. It dealt not with the professionals,
24 but it deals with the parties themselves, where I declined
25 to allow them to redact names of their shareholders and

1 interest holders because it's important for the public to be
2 able to see what the Court is considering when it decides
3 whether or not to approve a retention or not.

4 Do you have any arguments why retention
5 applications professionals should be permitted to redact
6 names from those?

7 MS. JONES: Understood, Your Honor. We have
8 nothing further than what we've put in our papers.

9 THE COURT: All right. Any other professionals
10 who want to be heard?

11 MR. PESCE: Your Honor, it's Gregory Pesce, White
12 & Case, proposed counsel to the committee. I'm going to
13 handle the White & Case retention in a moment and can speak
14 to this. We have no objection to the customer names being
15 unsealed in our retention application. We were effectively
16 filing suit since the Debtors filed theirs first and had
17 sought to seal the customer names. We will immediately re-
18 file them if you require us to do so.

19 There's a separate sealing issue that's going to
20 be heard on October 6th, which is there's one potentially
21 interested party that was listed in our retention
22 application and that was sealed to sort of protect the
23 process that -- seal their name as the Debtors were sort of
24 running that process; that's up on October 6th as well.

25 And, I believe Miss Cornell plans to deal with the

1 other retention issues then, but no objection on the
2 customers from the committee for White & Case's retention.

3 THE COURT: All right. I'm going to take this
4 issue under submission. I had -- we dealt with this at the
5 last hearing. I raised some suggestions. There were no
6 takers. I will deal with all of these in an opinion in due
7 course.

8 All right. Let's go on to the next item on the
9 agenda.

10 MS. JONES: Understood. Thank you, Your Honor.
11 If I may, can I move forward to the uncontested matters
12 before passing the podium over for the retention
13 applications?

14 THE COURT: Sure.

15 MS. JONES: The first matter then will be item 11
16 on the agenda which, Your Honor, this was a reporting
17 stipulation framework that we filed at docket number 668.
18 It was on presentment. The objection deadline passed on the
19 7th. There was no objection and so we planned to submit a
20 proposed order to chambers, but we had it listed on the
21 agenda since presentment time was for today's hearing in
22 case I have an objection.

23 THE COURT: Does anybody else want to be heard?

24 All right. It's granted.

25 MS. JONES: Thank you, Your Honor. Then the next

1 item on the agenda is item number 12 which is an email
2 service motion was filed at docket number 640. Pursuant to
3 that motion, the Debtors are seeking to serve individuals
4 both by email and on the Celsius web app as well as first-
5 class mail in circumstances where we have both. Certain
6 circumstances we only have their email.

7 THE COURT: Let me stop you there. I've reviewed
8 this carefully. It's approved.

9 MS. JONES: Thank you, Your Honor. The next item,
10 I believe, Your Honor, that -- the account redaction motion,
11 although uncontested but correct if I'm wrong that that will
12 also be addressed under your submission?

13 THE COURT: It will.

14 MS. JONES: Thank you, Your Honor. And then I
15 assume, Your Honor, item number 14 which is the creditor
16 matrix motion also deals with certain redaction that, once
17 we have your ruling, we will submit a revised proposed order
18 in line with that?

19 THE COURT: Yes.

20 MS. JONES: Okay. Thank you, Your Honor. So --

21 THE COURT: It's 15 not 14 but that's --

22 MS. JONES: Yes. Item number 14, thank you, Your
23 Honor. So with that, Your Honor, I know there's item number
24 15 which is information protocol motion but that is the
25 committee's motion and so at this point, I propose to the

1 pass the podium back to my colleague Mr. Kwasteniet who'll
2 be dealing with our retention applications.

3 THE COURT: Okay. Go ahead.

4 MS. JONES: Thank you, Your Honor.

5 MR. KWASTENIET: Good afternoon, Your Honor. Ross
6 Kwasteniet from Kirkland & Ellis proposed counsel for the
7 Debtors.

8 If it please Your Honor, Mr. Pesce has a
9 scheduling challenger this afternoon and requested that the
10 committee go first with respect to their retention
11 applications. So if Your Honor's all right with taking
12 those out of order, we're certainly fine with having the
13 committee go first so that Mr. Pesce can be released to his
14 next engagement.

15 THE COURT: Sure. Mr. Pesce, go ahead.

16 MR. PESCE: Thank you, Mr. Kwasteniet and thank
17 you, Your Honor for accommodating me. I greatly appreciate
18 it.

19 The next matter up is the White and Case retention
20 application. Consistent with our practice when we represent
21 Debtors and Creditors, we ran an exhaustive search and
22 whenever there was a judgment call, we bordered on over
23 disclosure rather than under disclosure. Following the
24 filing of that application, we had dialog with the United
25 States Trustee's Office. As a result of that dialog, we

1 filed a supplemental disclosure affidavit from myself and
2 I'm here if you have any questions about that. We also
3 filed an updated order to clarify how, among other things,
4 fees and expenses will be dealt with in our retention.

5 As far as I'm aware, there is no formal objection
6 to our retention -- you know, it's -- as came up earlier in
7 the hearing, obviously, some parties and interests have
8 raised questions regarding other matters that my firm has
9 been involved with. Just to set the record, you know, we
10 have over 2500 attorneys in 40 different countries all over
11 the world. Like any law firm, they sometimes represent
12 other people, become involved in bankruptcy cases. Apropos
13 to my other comments, we try to border on over inclusion, in
14 doing so, some of the parties have raised issues about those
15 other representations.

16 I'm happy to go through the ones that I'm aware of
17 that came up or any other topics, but in short, we believe,
18 particularly in light of the subsequent disclosures that we
19 made with the United States Trustee's agreement and they're
20 not objecting, that we meet the standards for retention.

21 We're obviously going to continue to update our
22 disclosures during the pendency of the case, and unless Your
23 Honor has any questions, we would ask that you grant our
24 retention application.

25 THE COURT: Mr. Phillips, do you want to be heard

1 on the White & Case retention application?

2 MR. PHILLIPS: Yes, I do, Your Honor. Richard
3 Phillips, unsecured creditor appearing pro se.

4 THE COURT: Go ahead.

5 MR. PHILLIPS: I want to thank Your Honor for
6 letting me speak and I apologize for not filing a timely
7 objection. I was under the impression that the U.S. Trustee
8 would be doing so as opposed to just filing a revised
9 proposed order.

10 I'd ask the Court to -- for a continuance to the
11 10-1 hearing so that I may be given leave to actually file a
12 timely objection addressing my particular concerns. I do
13 think that Mr. Pesce's revised declaration continues to
14 suffer from lack of transparency. I'm glad these -- you
15 know, providing unredacted information on the creditors. I
16 don't believe he provided -- (indiscernible) provide
17 unredacted information as to the identity of the consortium
18 clients.

19 Also I think it's very important to understand
20 which attorneys in this massive firm are actually conflicted
21 out of this representation and on the other side of the
22 Chinese wall. The WestCap matter in particular is very
23 complex and I don't think we know the rights and privileges
24 of the Series B preferred enough to fully evaluate total
25 conflicts there.

1 What Mr. Pesce's firm (indiscernible) case may
2 actually be a witness in these proceedings because they
3 oversaw the due diligence to that matter and may have
4 exposure due to -- I don't know what Mr. Dunn's going to do
5 on behalf of WestCap in terms of pursuing their claims.
6 Potentially, there are claims that WestCap could pursue that
7 would impact the recovery of the unsecured creditors given
8 the complex nature of the investment and the complex
9 structure of the corporate entities involved here.

10 So I think that there needs to be more full
11 disclosure of the WestCap matter and also of the consortium
12 before the conflicts can be fully evaluated in this case. I
13 would ask for a continuance.

14 THE COURT: Thank you, Mr. Phillips. Mr. Pesce,
15 can you briefly describe what ethical screens you've created
16 within the firm?

17 MR. PESCE: I can, Your Honor. As part of our
18 dialog with the United States Trustee's Office, we were
19 asked to provide a list of all of the timekeepers at White &
20 Case that worked on the diligence project for WestCap during
21 the other engagement. We provided that list and have
22 confirmed that none of the timekeepers on that list are
23 providing advice to the committee in connection with the
24 committee engagement, and as I mentioned, there's an ethical
25 screen there. We're following all of the protocols there.

1 I should note that our screens are not
2 speculative. We recently defended them earlier this week.
3 It was a -- our screening process in another matter was
4 actually upheld by the third circuit so we take these very
5 seriously. We provided the information and we do not view -
6 - this is an issue since they're not going to providing work
7 and we conversely are not going to be receiving any of the
8 information with that other team in their matter. May have
9 received -- and the files are sealed -- the computer systems
10 can't -- the computer systems won't let me or Mr. Turetsky
11 or Mr. Wofford access their files and them vice versa.

12 So -- and again, there's no ongoing representation
13 of WestCap today. It's a former representation, former
14 clients of the firm. So in light of that, we do not believe
15 that that is a conflict that would prevent us from
16 representing the committee vigorously here in this case.

17 THE COURT: Okay. Ms. Cornell?

18 MS. CORNELL: Thank you, Your Honor. Shara
19 Cornell with the Office of the United States Trustee.
20 Committee counsel's correct. We have been working quite
21 diligently to work through all of these issues. Understand
22 there are some. Our office does have the consortium names.
23 We also did discuss with committee counsel the possibility
24 of obtaining conflicts counsel if it becomes necessary in
25 this case. We discussed that at length with Mr. Pesce and

1 he was understandable of that possibility.

2 I believe there's also a waiver in this case that
3 had been executed. I'm not sure if the parties had discussed
4 that but we were given all of that information that were
5 then provided with the supplements from committee counsel.

6 THE COURT: Mr. Pesce, can you just address the
7 waiver? I don't remember seeing that.

8 MR. PESCE: Sure. My initial declaration, we
9 stated that as part of the WestCap engagement, they had
10 provided, you know, an advance written waiver as part of the
11 retention process and we believed it was enforceable and we
12 disclosed that in the original declaration and I believe we
13 also referenced it by reference in the second declaration as
14 well.

15 THE COURT: Does anybody else wish to be heard who
16 I haven't heard so far? All right. Mr. Phillips' request
17 for an adjournment is denied. The White & Case retention is
18 approved.

19 MR. PESCE: Thank you, Your Honor. I greatly
20 appreciate it and with the Court's permission, if I may be
21 excused. My partners, Mr. Turetsky and Mr. Wofford, will be
22 continuing the hearing on behalf of the creditors committee
23 today.

24 THE COURT: Thank you.

25 MR. PESCE: Thank you, Your Honor. Thank you, Ms.

1 Cornell.

2 THE COURT: All right. Let's go back to --

3 MR. WOFFORD: Keith Wofford --

4 MR. KWASTENIET: Yes, Your Honor. Ross Kwasteniet
5 from Kirkland. We can probably resume back with the
6 original order of the agenda unless Mr. Wofford or Mr.
7 Turetsky, there's any need to continue with the committee
8 applications at this point. I'm happy to go either way.

9 THE COURT: We're happy for you to proceed.

10 MR. KWASTENIET: Very good, Your Honor. Up next
11 is -- again, Ross Kwasteniet from Kirkland & Ellis, proposed
12 counsel to the Debtors for the record.

13 The next item on the agenda is number 3. It's the
14 Kirkland & Ellis retention application. Your Honor, we did
15 receive an objection from the United States Trustee's
16 Office. We dealt with it in the context of the sealing
17 motion. In addition to that objection with respect to
18 sealing which I think enough has been said on, the U.S.
19 Trustee's Office also had some comments which we
20 accommodated, both through a supplemental declaration from
21 my colleague Mr. Nash as well as revisions to the proposed
22 form of order.

23 Your Honor, just very briefly, I believe last
24 night, we filed at docket number 808 a proposed form of
25 order that included not only the revisions agreed to with

1 Ms. Cornell's office but also a new paragraph that said that
2 the Debtors will comply with however Your Honor rules with
3 respect to the sealing question with respect to the
4 individual names. Your Honor, I will submit that that it is
5 a -- that same paragraph which we negotiated with the U.S.
6 Trustee's Office and I believe Ms. Cornell has signed off on
7 but she can tell me -- tell us -- if that's wrong, has been
8 replicated into each of the Debtors' proposed orders as well
9 as I believe in the committee's proposed orders, Your Honor.

10 So we are all agreeing that however Your Honor
11 decides and if names need to be fully disclosed, we are
12 prepared to do that, and of course we will commit to all
13 ongoing searches. We have an extremely robust search
14 process.

15 Your Honor, that leaves us with several pro se
16 objections to Kirkland's retention. Right off the bat, Your
17 Honor, I'll note that the standard which Your Honor has
18 elucidated in several published opinions is that a retained
19 professional under 327(a) must not hold or represent an
20 interest adverse to the estate. Here, I don't believe there
21 is any allegation that Kirkland holds an adverse interest
22 against the estate, but several pro se objectors have raised
23 arguments that they believe that Kirkland may represent
24 adverse interests. And in particular, Your Honor, they seem
25 to have focused on our -- the fact that Kirkland is also

1 representing Voyager.

2 And with respect to that, Your Honor, I want to
3 note just a few things. In Mr. Nash's original declaration,
4 he made clear that Kirkland would not be representing
5 Celsius in matters adverse to Voyager or Voyager in matters
6 adverse to Celsius. That representation was bolstered in
7 his supplemental declaration.

8 Your Honor, I would also note that both Celsius
9 and Voyager have conflicts counsel to handle any issues that
10 may arise between the parties. Several of the pro se
11 litigants point to the fact that both Voyager and Celsius
12 are creditors, Voyager much more so to larger claim amounts
13 in the Three Arrows case, but Celsius also with a not
14 insignificant claim there.

15 With respect to that, Your Honor, again, both
16 firms have conflicts counsel. Both Debtors have conflicts
17 counsel who would deal with issues in the Voyager case and
18 any dispute that may arise. But we believe that right now
19 and likely forever, the interests of Voyager and Celsius are
20 fully aligned. There's a winddown liquidation proceeding
21 and we expect that the creditors in that proceeding are
22 going to be treated equally so this is not a situation of a
23 race to the courthouse or we do a better job representing
24 one versus another and one creditor gets a better recovery,
25 and in fact, we're not representing Celsius or Voyager in

1 respect to pursuing claims in the Three Arrow case, in any
2 event.

3 Finally, Your Honor, I would note that while
4 Voyager is listed as a creditor in the Celsius case -- we've
5 disclosed that in our declaration -- it is a relatively
6 small creditor and it is one of hundreds of thousands of
7 similarly situated creditors so this is not a situation like
8 others that have come before you, Your Honor, where you've
9 had an issue with whether conflicts counsel was appropriate.
10 Here, Voyager is far from the main issue in the case.
11 They're similarly situated to hundreds of thousands of
12 others, and again, Kirkland -- the Celsius Debtors have
13 conflicts counsel who are more than able to step in and
14 address any conflicts that may arise with respect to the
15 Voyager case.

16 So, Your Honor, the Debtors respectfully submit
17 that the challenges raised or issues raised by the pro se
18 Plaintiffs are not a reason to question whether Kirkland is
19 disinterested and whether we satisfy the standards of
20 327(a), Your Honor.

21 THE COURT: I just comment on that in the Project
22 Orange case that you're probably referring to. I sustained
23 the U.S. Trustee's objection to the retention of the
24 Debtor's lead bankruptcy counsel because the largest
25 creditor in that case was also a client of the firm and I

1 concluded that it would be impossible to confirm a plan
2 without resolving the issue with that creditor, and I found
3 that conflicts counsel was not sufficient in those
4 circumstances, but let me hear from Ms. Cornell.

5 MS. CORNELL: Thank you, Your Honor. Shara
6 Cornell on behalf of the Office of the United States
7 Trustee. Mr. Kwasteniet is correct. We've discussed this
8 at length with Kirkland & Ellis and their relationship
9 between the two Debtors. We have been discussing this with
10 them since before the case was even filed, and at this time,
11 we're satisfied with the representation -- of their
12 representation of their representation of both parties.
13 Voyager in this case is not even in the top 50 creditors. I
14 don't believe it's anywhere close, and I do not believe that
15 there is conflict at this time.

16 THE COURT: And as I already commented in that
17 Project Orange case, it was your office, Ms. Cornell -- it
18 was before you were in that office -- that objected to the
19 retention of the Debtor's principal counsel so I certainly
20 know that your office reviews these issues very carefully.
21 This is a very different situation than Project Orange.

22 As I said, Project Orange -- the Debtor's proposed
23 counsel also represented the largest creditor in the case in
24 another matter, but, nevertheless. I think it's a very
25 different situation.

1 MS. CORNELL: Yes, Your Honor.

2 THE COURT: Does anybody else wish to be heard
3 with respect to the retention of Kirkland & Ellis? Mr.
4 Herrmann.

5 MR. HERRMANN: Yes, thank you, Your Honor. So one
6 thing I wanted to note for you is that I actually filed a
7 supplemental response at 11:38 a.m. yesterday, but
8 unfortunately --

9 THE COURT: I've read every one of your pieces of
10 paper, Mr. Herrmann.

11 MR. HERRMANN: Oh, awesome. Okay. So anyway, I
12 just wanted to say --

13 THE COURT: I don't mean that I -- I take everyone
14 of them serious because I think you've raised some very
15 important issues. So let me --

16 MR. HERRMANN: Thank you so much, Your Honor. I
17 appreciate it. So actually, I -- if Ms. Cornell thinks that
18 the Three Arrows thing is fine then that's fine with me. I
19 did raise two other points that I wanted to briefly bring
20 up.

21 One is just that, you know, Kirkland, whether they
22 represent shareholders and management, I had suggested that
23 they clarify that they've not represented them since they
24 were first engaged and will not represent them during the
25 remainder of the case. And then also I just wanted to

1 clarify also about non-Debtor affiliates and using Debtor
2 affiliate dollars to pay for representation of non-Debtor
3 affiliates or other representation averse to the Debtor's
4 estate.

5 If they're spending estate resources to keep
6 entities out of the estate --

7 THE COURT: I don't your point. I understand the
8 issue about the non-Debtors and where -- how the money's
9 flowing, but I don't follow what, in terms of the
10 representation of Kirkland & Ellis --

11 MR. HERRMANN: Oh, I'm wondering if Kirkland is
12 essentially using money from, say, Celsius Network, LLC, to
13 pay for representation of companies that aren't even part of
14 -- like I'm wondering who decides what becomes a Debtor --
15 you know, basically, what becomes a Debtor affiliate and
16 what becomes a non-Debtor affiliate and then who's paying
17 for the legal fees for the non-Debtor affiliates to make
18 these determinations.

19 THE COURT: Let me ask. Mr. Kwasteniet, are you
20 representing any of the non-Debtors -- non-Debtor
21 affiliates?

22 MR. HERRMANN: Sorry. I didn't --

23 MR. KWASTENIET: Your Honor, I want to double
24 check our engagement letter. I believe that our engagement
25 is for the parent and its affiliates. I'd like to double

1 check whether that includes non-Debtors, but it was an
2 important point to note, Your Honor, is that we do have a
3 business unit in Israel. We have referred to it as the GK8
4 business. It is a material asset of these cases and I've
5 been on calls as recently as yesterday about how most
6 efficiently to monetize that asset. At some point in time,
7 Your Honor, it may be that in connection with the sale
8 process, those entities actually become Chapter 11 Debtors
9 but certainly as part of our role as the company's
10 restructuring counsel, we are mindful and paying some
11 attention to those non-Debtor entities.

12 But, again, Your Honor, those are assets of the
13 estate and so it's appropriate for the Debtors to, you know,
14 be paying fees as necessary to maintain and maximize the
15 value of those estates. I'd also submit that that's not an
16 unusual fact pattern in these Chapter 11 cases. But if Your
17 Honor would like an answer to the specific question as to
18 whether the non-Debtors are included in the engagement
19 letter, we can look that up pretty quickly. I can let you
20 know.

21 THE COURT: Please do that. Okay. Mr. Herrmann,
22 anything else you want to say?

23 MR. HERRMANN: No. I think that essentially
24 covers it. You know, it was a limited objection. My most
25 recent supplemental response kept it as a limited objection

1 so I just wanted to get these things covered. You know I
2 did say that -- you know, I would support -- I mean, if they
3 can sign a supplemental statement that they're not going to
4 represent shareholders and management, I think that would be
5 good, but honestly, I leave that to you, Your Honor. I'm
6 just a pro se creditor so (indiscernible). But I put that
7 in my document and that's pretty much all I've got.

8 THE COURT: Thank you very much.

9 MR. KWASTENIET: Your Honor, I forgot -- I
10 neglected --

11 THE COURT: Go ahead, Mr. Kwasteniet. Go ahead.

12 MR. KWASTENIET: Your Honor, I neglected to
13 address Mr. Emmanuel's first point. Our engagement letter
14 is clear that we represent the company not individual
15 officers and directors. We have not, we will not, we do not
16 represent the individual officers and to the extent -- I'll
17 double check our prior affidavits to the extent that wasn't
18 made clear. I think it is clear in the engagement letter.
19 It's a fundamental term of our engagement, you know, the
20 scope of who we're representing, but I'd make that
21 representation on the record.

22 THE COURT: Thank you. All right. Mr. Frishberg.

23 MR. FRISHBERG: Thank you, Your Honor. I just
24 wanted to say -- some of the points I was going to make Mr.
25 Herrmann made, but like all of Kirkland & Ellis's lawyers,

1 Mr. Sussberg who represents currently both Voyager and
2 Celsius but it's more related to how he potentially may
3 represent the shareholders and he's a -- Mr. Sussberg is an
4 ethical and honest lawyer, but no lawyer can fully represent
5 two potentially conflicting parties which is why I think
6 that there are at least a so-called fire wall or attorney's
7 wall should be erected between the two -- between Kirkland &
8 Ellis.

9 THE COURT: Mr. Frishberg, what's fairly typical
10 in cases like this is that conflicts counsel is retained and
11 I think in so far as Voyager and Celsius (indiscernible)
12 involved, you know, Kirkland can't represent both of them at
13 the same time on a particular issue. That's one of the
14 reasons you have conflicts counsel, and those have been
15 retained.

16 MR. FRISHBERG: I think that in order to avoid
17 conflicts of interest, Kirkland & Ellis should be ordered to
18 issue a sworn statement confirming that they have never
19 given legal advice to Mr. Mashinsky, Mr. Leon, and any other
20 Celsius employees in their personal roles. And Kirkland &
21 Ellis and/or the Debtors should disclose the identity of the
22 lawyer or lawyers who drafted the declarations
23 (indiscernible) for Mr. Leon and Mr. Mashinsky since those
24 declarations at least to me look like they were written by
25 an attorney.

1 THE COURT: Mr. Frishberg, they filed declarations
2 on behalf of the Debtor. In every case, it's typical to
3 have the CEO assign the first day declaration -- the 1007
4 declaration. So there's nothing --

5 MR. FRISHBERG: (indiscernible) how is a tax
6 benefit to --

7 THE COURT: Stop.

8 MR. FRISHBERG: Yes, Your Honor.

9 THE COURT: I read that declaration very
10 carefully. I've had lots of questions along the way. It is
11 very common in representing a corporate debtor to engage
12 with its officers and directors, obtain information from
13 them, use it in connection with the case, prepare
14 declarations, but that is not a representation of the
15 individuals. We've had the very explicit statement that
16 Kirkland is not representing Mr. Mashinsky individually or
17 the other individuals. All right. Anybody else who wants
18 to be heard with respect to the Kirkland retention
19 application?

20 All right. Again, subject to my ruling on the
21 sealing issues, it's approved.

22 MR. KWASTENIET: Thank you, Your Honor. The next
23 item on the agenda, Your Honor, is the Debtor's proposed
24 retention of Akin Gump Hauer & Feld as special litigation
25 counsel and also conflicts counsel.

1 Your Honor, we did file a proposed form of order.
2 Similarly, to the other Debtor's professionals, Akin worked
3 with the Office of the United States Trustee with respect to
4 supplemental declaration and certain modifications to their
5 order, and we did file just yesterday a form of order at
6 docket number 810 that included that same paragraph I
7 referenced with respect to the Kirkland order that says that
8 they will comply with Your Honor's ruling with respect to
9 sealing and will update -- the Debtors will update and file
10 unredacted schedules if that's what Your Honor requires.

11 I don't believe that there are any pending
12 objections to the Akin retention.

13 THE COURT: Ms. Cornell?

14 MS. CORNELL: Thank you, Your Honor. Shara
15 Cornell on behalf of the Office of the United States
16 Trustee. We worked quite closely with counsel at Akin to
17 resolve our outstanding issues in this case and as Mr.
18 Kwasteniet said, in addition to the additional supplement
19 that was filed, there were several changes made to the order
20 that are now satisfactory to the United States Trustee's
21 Office.

22 THE COURT: All right. Does anybody else wish to
23 be heard? All right. That retention is approved as well.

24 MR. KWASTENIET: Thank you, Your Honor. Next on
25 the agenda is the Debtor's motion to retain Latham & Watkins

1 as counsel. Latham has been doing regulatory work for the
2 company and has been interfacing with various state
3 regulators and federal regulators, and given their body of
4 knowledge and what I can represent have been extensive
5 efforts directed by our special committee that Latham and
6 Kirkland coordinate with each other but not overlap with
7 each other, Latham does have a unique and distinct role
8 here. And similar to the other retention applications,
9 Latham has also worked with the Office of the United States
10 Trustee, has filed a supplemental declaration and a revised
11 form of order, the latest of which, Your Honor, was filed at
12 docket number 807 and again, includes the language that they
13 will comply with Your Honor's ruling with respect to sealing.

14 THE COURT: Ms. Cornell.

15 MS. CORNELL: Shara Cornell on behalf of the
16 Office of the United States Trustee. That's correct, Your
17 Honor, and just for the comfort of all of those listening, I
18 just want to remind everybody that our offices worked with
19 counsel for the Debtors and all of the proposed
20 professionals to discuss overlapping duties in this case and
21 that there will be an effort of all of the professionals to
22 not duplicate work and that we will be looking for that in
23 the future in there are any issues. So I just want to make
24 sure that that's out there and everybody understands that.
25 Thank you.

1 THE COURT: Thank you, Ms. Cornell. All right.

2 It's approved.

3 MR. KWASTENIET: Thank you, Your Honor. Up next
4 is the Debtor's proposed retention of Stretto. Again,
5 similarly, Your Honor, we have filed a revised proposed form
6 of order at docket number 809 that's similarly includes a
7 commitment on the part of Stretto to file unredacted
8 schedules consistent with Your Honor's order.

9 THE COURT: Ms. Cornell.

10 MS. CORNELL: Shara Cornell on behalf of the
11 Office of the United States Trustee. No objection.

12 MS. CORNELL: Shara Cornell, on behalf of the
13 office of the United States Trustee. No objection.

14 THE COURT: All right. And I was -- we don't have
15 an (indiscernible) issue with respect to the Stretta
16 retention?

17 MS. CORNELL: Not in this case, Your Honor.

18 THE COURT: It's approved.

19 MR. KWASTENIET: Thank you, Your Honor. I believe
20 the last of the Debtors' -- or second to the last of the
21 Debtors' retention applications is Docket Number 7, the
22 motion to retain Alvarez and Marsal. Your Honor, similar to
23 the other advisors, A&M and worked out a revised form of
24 order, which was filed at Docket Number 805, also including
25 the commitment to file unredacted schedules, consistent with

1 any ruling Your Honor makes.

2 THE COURT: Ms. Cornell?

3 MS. CORNELL: Shara Cornell, on behalf of the
4 office of the United States Trustee. That's correct. No
5 objection at this time. Thank you.

6 THE COURT: All right. It's approved as well.

7 MR. KWASTENIET: Thank you, Your Honor. The
8 Debtors' last retention application is for their investment
9 banker, Centerview Partners. In addition to the informal
10 comments United States Trustee's office, which has been
11 resolved, as I understand, Centerview also received from
12 informal comments from the Creditors' Committee that dealt
13 primarily with the amount of the monthly fee and how certain
14 other fees in the engagement letter worked.

15 Your Honor, the Debtors filed a revised proposed
16 form of order at Docket Number 803 that reflects the
17 agreement between Ms. Cornell's office and also the
18 Committee with regard to certain revisions to the monthly
19 fee and some of the transaction-related fees, Your Honor.

20 THE COURT: Ms. Cornell?

21 MS. CORNELL: That's correct, Your Honor.

22 THE COURT: All right. It's approved as well.

23 MR. KWASTENIET: Thank you, Your Honor. I believe
24 that brings us to the end of the Debtors' agenda, and I
25 would turn it back over to counsel for the Committee for the

1 balance of the Committee's agenda.

2 Following that, Your Honor, just wanted to remind
3 everybody that we did note that we'd like to have a
4 discussion about scheduling with respect to the pleadings
5 that are on file with respect to custody and the withhold
6 issues. And I would turn it to my calling, Mr. Koenig, at
7 the end of the discussion on the Committee's retention
8 applications.

9 THE COURT: Thank you. Okay.

10 MR. KWASTENIET: Thank you, Your Honor.

11 MR. TURETSKY: Good afternoon, Your Honor. David
12 Turetsky, of White & Case, on behalf of the Committee. Your
13 Honor, before I get into the first retention application,
14 which was the Kroll retention application, I did want to say
15 that similar to Ms. Cornell, the Committee did review all of
16 the retention applications and worked with the Debtors where
17 reseller issues, in particular on Centerview. And Your
18 Honor has already approved that, but I did want to provide
19 reassurance to our constituency that that was the case.

20 Your Honor, the first retention application for
21 the Committee is the Kroll retention application. That was
22 filed at Docket Number 433 with appended exhibits at 443.
23 We filed a certificate of no objection with a proposed
24 order. This is to retain Kroll's information agent as well
25 as noticing agent to the Committee. We believe that that

1 relief is critical to the Committee's efforts to engage with
2 its constituency. We believe it's standard. And we would
3 ask that Your Honor enter the order.

4 THE COURT: Ms. Cornell?

5 MS. CORNELL: That's correct, Your Honor. No
6 objection at this time. Thank you.

7 THE COURT: All right. The Kroll retention
8 application is approved.

9 MR. TURETSKY: Thank you, Your Honor. The next
10 matter for the Committee is an information protocols motion.
11 It relates to the relief that we just sought and obtained on
12 Kroll. It's a motion to establish information protocols, as
13 well as information platforms, with which the Committee can
14 communicate with its constituency.

15 I'd note that I believe that the relief is pretty
16 standard, with one exception. It does request information
17 platforms that use -- that make greater use of social media
18 than is sometimes seen. With that said, we think that given
19 the context of this case, it's appropriate to do so.

20 We did receive a response from Creditor Rights
21 Coalition, which was supportive of the relief that we
22 sought. However, they did ask that we provide for
23 additional language in the proposed order indicating that
24 among the information that the Committee could provide to
25 its constituents on one of the information platforms, which

1 includes a website, is recommendations with respect to a
2 plan after approval of the disclosure statement. We thought
3 that made sense. We did so.

4 We also conferred with Ms. Cornell and made
5 certain revisions to the proposed order. And we'd ask that
6 Your Honor, unless there are any questions, enter the
7 proposed order.

8 THE COURT: Mr. Turetsky, it may have been there.
9 It's been hard for me to keep up with the docket. I think I
10 asked at a prior hearing to see the bylaws that the
11 Committee adopted. Have those been posted?

12 MR. TURETSKY: They have. I believe they were
13 posted during the last hearing. I can double check if you
14 would like, but I believe they've been posted.

15 THE COURT: If you could have one of your
16 colleagues just let me know the ECF docket number. It's
17 been hard to keep up with all of the filings. I did want to
18 review that.

19 MR. TURETSKY: Absolutely, Your Honor. Thank you.

20 THE COURT: Does anybody wish to be heard with
21 respect to the information protocol motion?

22 MS. CORNELL: Your Honor, this is Shara Cornell,
23 with the office of the United States Trustee. I just wanted
24 to echo Mr. Turetsky's comments. We did work closely with
25 the Committee on this motion, and I know that Mr. Turetsky

1 said that this is a common motion. It actually contains a
2 little uncommon relief that I would just like to bring to
3 Your Honor's attention, and if Your Honor has any questions
4 about some of the changes to the order that Committee
5 counsel and the United States Trustee came to.

6 For example, the specific social media platforms
7 that were proposed in the original order have now been
8 limited to only those expressed in the order. We have also
9 required that the Committee post its official handles or
10 names for those platforms, so that participants will be
11 aware of who they are communicating with.

12 We have also made certain requests that should be
13 noted on the record, I think. The author of these
14 communications is going to be -- and Mr. Turetsky can
15 correct me if I'm explaining it wrong -- but the author of
16 these communications is going to be Kroll. However, Kroll
17 will be getting its information from counsel for the
18 Committee and the Committee itself. And I think that
19 perhaps counsel for the Committee can explain that a little
20 bit on the record for its constituency, so that the
21 constituency understands who will be communicating with them
22 on these platforms.

23 MR. TURETSKY: That's right, Your Honor. Dave
24 Turetsky again for the Committee. While in point of fact,
25 Kroll is maintaining these information platforms, postings

1 will come from the Committee, as advised by its advisors,
2 and so the information that is being provided on these
3 platforms will not be Kroll's information, but rather
4 postings from the Committee itself. And obviously, there
5 will be more traditional postings that relate to, you know,
6 key events of the case, where key documents can be found,
7 that type of thing.

8 I do acknowledge, and I thought I had
9 acknowledged, that the information platforms make greater
10 use of social media, but Ms. Cornell has elaborated on that,
11 and I would agree with that elaboration.

12 In addition to that, we are specifying in the
13 order that the information that is being provided does not
14 constitute legal advice. And I think that that's important
15 as well because we don't want to give the impression that
16 we're doing anything other than informing our constituents.
17 We are not giving them legal advice. Obviously, to the
18 extent that individual creditors have individual issues, we
19 do have FAQs. But they should consult their own counsel to
20 address those issues as a legal matter.

21 THE COURT: Does anybody else wish to be heard
22 with respect to the information protocol motion? All right.
23 The motion is granted.

24 MR. KOENIG: Good afternoon, Your Honor. Chris
25 Koenig, from Kirkland and Ellis, as counsel to the Debtors.

1 I'm here to address the custody and withhold scheduling
2 matters that Your Honor raised at the last hearing.

3 So, at the last hearing you directed the parties
4 to meet and confer about whether we could have a separate
5 hearing date, separate from the omnibus hearings, at which
6 the custody and withhold issues can be heard separate from
7 all the other items that are on agendas for omnibus hearings
8 in these cases. We have met and conferred.

9 There are three matters that are currently pending
10 with respect to custody and withhold. First, there's the
11 Debtors' motion to allow customer withdrawals from certain
12 accounts. Then the Ad Hoc Group of withhold customers filed
13 a motion to lift the automatic stay. And of course, the Ad
14 Hoc Group of custody customers filed an adversary
15 proceeding, and there is a pretrial conference, a status
16 conference, in that matter scheduled as well.

17 All of those matters are currently scheduled for
18 the October 6th omnibus hearing at 10:00 AM. We've met and
19 conferred with the other parties. We would propose to have
20 that heard on October 7th.

21 Your Honor, I recognize that that's a Friday and
22 that's an unusual scheduling request for your chambers.
23 Just wanted to note some of the scheduling difficulties that
24 week. Earlier in that week, there's Jewish holidays on
25 Tuesday and Wednesday, and then of course we have the

1 omnibus hearing on Thursday.

2 And given when the lift stay motion was filed
3 pursuant to Section 362(e) of the Bankruptcy Code, there has
4 to be a hearing on that matter within 30 days. The last day
5 of that 30-day period is the 7th, which is how we arrived at
6 the 7th. So, that is what the parties would like to do with
7 respect to scheduling.

8 There's another matter that I'll turn to in a
9 moment, about the letter that Mr. Ortiz filed. But before
10 turning to that I just wanted to address the scheduling
11 matter with Your Honor.

12 THE COURT: So, we could do a Zoom hearing on
13 Friday, October 7th. I'm able to do that. I'm away later
14 in the day, but I could do that in the morning.

15 MS. CORNELL: Your Honor, this is Shara Cornell
16 with the office of the United States Trustee. I just wanted
17 to let Your Honor that we were currently in discussion with
18 the Debtors for scheduling the continued 341 meeting for
19 October 7th in the morning. I just wanted to put -- we can
20 pick a different date if that's the only date available for
21 Your Honor. But I just wanted to make sure that you are
22 aware that. Thank you.

23 THE COURT: Thank you, Ms. Cornell. The Jewish
24 holiday of Yom Kippur is Tuesday night and Wednesday.
25 That's clearly out. The 6th, we have the hearing. And I'm

1 willing to do this on Friday morning, the 7th. I don't know
2 how long people anticipate that hearing will last. I'm away
3 all of the following week, I should make clear. So, I can
4 do that hearing on the 7th.

5 I guess I'd like a better definition of what it is
6 I'm hearing at that time.

7 MR. KOENIG: Certainly, Your Honor. So, it would
8 be the Debtors' motion to reopen the -- to allow customers
9 to withdraw from certain customer accounts. Ms. Kovsky
10 filed a lift stay motion and then there's a status
11 conference in the adversary, and that's, I think, the matter
12 that we should discuss more substantively. Mr. Ortiz filed
13 a letter. And so, I'll turn the virtual lectern over to him
14 to discuss that matter.

15 THE COURT: Okay. Go ahead, Mr. Ortiz.

16 MR. ORTIZ: Good afternoon, Your Honor. Kyle
17 Ortiz, with Togut, Segal & Segal, on behalf of the Ad Hoc
18 Group of Custodial Account Holders.

19 We agree that the 7th is a good day, Your Honor.
20 But I think the difference that we have with the Debtor is I
21 think they want to have that be a status conference on our
22 adversary proceeding. And consistent with the letter that
23 we file that Docket 3 asking under Local Rule 7056-1 for a
24 premotion conference, our view is that we can have the
25 actual summary judgment motion that day --

1 THE COURT: You can't. And I'll explain why. But
2 go ahead.

3 MR. ORTIZ: I mean, Your Honor, I don't want to
4 belabor a point that you've kind of already said we can't.
5 I think the main point from our perspective is, you know, to
6 the extent that we still need to have a premotion conference
7 to put on a summary judgment motion ahead of that status
8 conference, I do think we would want that heard, you know,
9 at least pretty quickly after the 7th. And obviously, those
10 are things we can deal with on the 7th.

11 But we do think that the relief that we're asking
12 for is in many senses the exact same relief that the Debtors
13 are seeking, with the difference of, you know, who can be
14 released at what time.

15 THE COURT: Let me ask -- let me put some
16 questions to both sides. First -- and let me make clear, I
17 want to try and resolve the custody and withhold issues as
18 soon as reasonably possible. And I'm not trying to throw
19 any monkey wrenches into the efforts to do that.

20 Mr. Ortiz, do you have case authority that an ad
21 hoc committee has standing to file this adversary proceeding
22 for a declaratory judgment and get the result that it's
23 asking for?

24 MR. ORTIZ: Well, the Ad Hoc Group represents
25 parties in interest in this case, 26 --

1 THE COURT: (Indiscernible)

2 MR. ORTIZ: I don't, offhand at this very moment,
3 Your Honor.

4 THE COURT: If the plaintiffs in that adversary
5 proceeding were the named Ad Hoc Group -- you refer in the
6 complaint to your 2019 statement, I appreciate. And it may
7 be that the group has increased in number.

8 Again, I'm not trying to throw a monkey wrench
9 into your efforts. I genuinely don't know the answer to
10 whether an ad hoc group has standing to raise the issues
11 that you have. I think that the account holders could. But
12 for the hearing on the 7th, if you want to brief in advance
13 -- I don't want the brief the day before -- a brief
14 addressing whether an ad hoc committee has the standing to
15 bring the adversary proceeding seeking, I would like to see
16 it.

17 If you conclude that they don't and you're going
18 to amend the complaint to name individually named
19 plaintiffs, fine. I'm sure that you can stipulate to an
20 agreement to amend the complaint and do that.

21 So, I just want to be sure that if I rule in your
22 favor that it's enforceable. And I just generally don't
23 know the answer. I looked quickly this morning and couldn't
24 find anything on it. So, I don't know. You may be able to
25 put your finger on authority that does it.

1 Then let me raise this question. When I say that
2 I'm not prepared to hear your summary judgment
3 (indiscernible), I understand the issues that were raised at
4 the last conference. Eighty-nine days before the filing of
5 a bankruptcy petition, the Debtor transferred property from
6 earn accounts into custody accounts. And it's going to
7 raise the preference issue.

8 I don't know... Well, has the Debtor filed a
9 responsive pleading yet to the Ad Hoc Committee's complaint?

10 MR. KOENIG: Your Honor, again, it's Chris Koenig,
11 for the Debtors. The summons that was issued -- the
12 deadline has not yet passed, Your Honor. We have not filed
13 one yet. The deadline is on October the 3rd, and that's
14 (indiscernible) Your Honor.

15 THE COURT: Okay. So, one question I have -- and
16 Mr. Ortiz said, well, there's no preference action against
17 anybody; return everybody's money and then, you know, then
18 somebody could chase 50,000 people in all parts of the world
19 to see whether you could recover preferences.

20 It hypothetically seemed to me that the Debtor
21 could file a counterclaim, a declaratory relief
22 counterclaim, for a determination that transfers 89 days
23 before the petition date are avoidable preferences.

24 I want to be able to resolve these issues, Mr.
25 Ortiz, sooner rather than later. And I think the response

1 you gave me at the last hearing about a respectable position
2 for you was, no, they haven't recovered avoidable damage,
3 sued to recover preferences. They haven't filed suit. They
4 haven't recovered on it. And so, give everybody their money
5 back. I don't -- you know, were it only so easy.

6 So, I think the Debtor has to seriously -- you
7 know, it may not want -- I can understand at this early
8 stage of the case -- to be suing every transferee who
9 received a transfer into a custody account 89 days -- Mr.
10 Ortiz's group -- I don't know. What are you up to? What's
11 your head count now for your Ad Hoc Committee, Mr. Ortiz?

12 MR. ORTIZ: Your Honor, I believe we're at around
13 70 that held, as of the petition date, \$26 million-or-so in
14 custody. And my understanding from the Debtor is that
15 market has moved that number up. But I think just making it
16 simple for the Court throughout, we'll always stick with the
17 petition date number, which is around \$26 million for the
18 group that we currently have.

19 THE COURT: No, I -- you know... I don't want to
20 put your clients, Mr. Ortiz -- you represent the Ad Hoc
21 Committee -- but the members of the Committee and the
22 position they're suddenly going to find themselves as
23 defendants in preference avoidance action, but the issue of
24 their getting their assets back is, in my view, inextricably
25 tied to what their avoidable preference is. And it may be

1 that some of your 26 are in different situations. Some may
2 have some defenses that others don't have. I don't know.

3 But I think that you and Mr. Koenig should talk
4 about whether -- can you agree to how this will be
5 structured, so the Court will deal with the issues of both
6 the (indiscernible) -- you know, yes, the terms of use that
7 all right, title and interest is in the account holder for
8 the custody accounts. And I'm not sure the Debtor was
9 contesting that part. It was the fact that they had done a
10 transfer 89 days before the bankruptcy.

11 And so, I think when we meet on the 7th, hopefully
12 you will have agreed on a game plan for how to structure
13 this and move forward. It may be -- if you believe of your
14 26-or-so clients, there are different defenses that may be
15 available to some and not others. I want trans -- look, if
16 you want to get this resolved, I'm not going to hear a
17 summary judgment motion until I think it's right to do that.

18 There hasn't been any discovery. If there has to
19 be discovery on defenses, for example, you ought to
20 voluntarily talk with the Committee and the Debtors'
21 counsel. I left the Committee out until now, but the
22 Committee's got a big stake in this. You know, if \$200
23 million gets to custody account holders, it's that much less
24 available for pro rata distributions to all of the unsecured
25 creditors.

1 So, the Committee has a stake in this, so I think
2 -- I don't know whether, Mr. Hershey, you're appearing with
3 your hand up on the screen -- to talk about these issues. I
4 think that you need to confer not only with the Debtors'
5 counsel but the Committee's counsel and see if you can come
6 up with an agreed game plan. And I'll try and cooperate to
7 get this all done sooner rather than later.

8 And what I'm telling you now is why you're not
9 going to have a summary judgment hearing on October 7th.

10 MR. ORTIZ: Right. Understood, Your Honor. Kyle
11 Ortiz for the Ad Hoc Group again. If it's all right with
12 Your Honor, I'd like to spend 30 seconds responding to some
13 of that.

14 THE COURT: Sure. Go ahead.

15 MR. ORTIZ: I think one of the things that we
16 wanted to make clear is that we weren't necessarily trying
17 to get to the preference action yet. I think there is a
18 kind of threshold issue where there is agreement and the
19 summary judgment was actually focused on just the plain and
20 simple answer of who actually the property is owned by,
21 whether or not it's property of the estate, which in our
22 view, the Debtors have largely conceded. Obviously, that's
23 -- the ultimate decision on that is Your Honors and not
24 theirs.

25 But, you know, there's that threshold question,

1 which we wanted to try to get to summary judgment. And then
2 there is the final follow-up question of what does that mean
3 with regards to when and how people can get assets back.
4 And I think that's when the potential preference comes in,
5 and I think, you know, that gets interesting because there's
6 -- you know, an examiner was appointed today, there's
7 questions of fraud, there's been things today said where
8 there's no clear end game.

9 So, it's not really clear that the Debtors will
10 ever bring preferences. They may or they may not. I think
11 we want to try to work together to get to the bottom of that
12 sooner rather than later, as Your Honor has said. I think
13 sooner rather than later are quotes of yours at every
14 hearing we've had to date.

15 But you know -- and we have been working with the
16 Committee and we have been working with the Debtors, but I
17 think there's two steps here. And we were trying, to the
18 extent that we could get agreement on really just that one
19 threshold question, and then from there --

20 THE COURT: I don't hear summary judgment motions
21 until the responsive pleadings have been filed. That hasn't
22 happened. That --

23 MR. ORTIZ: No, I understand, Your Honor. And
24 we're not trying -- I heard you loud and clear and the 7th
25 is the 7th, and that's on a pretrial conference. But I

1 think what we're trying to say is that I do think there is
2 hopefully a path forward to at least kind of getting
3 agreement on some of the key facts. And you know,
4 obviously, we're not going down the summary judgment route,
5 but the stipulated facts were all, you know, things from
6 their own pleadings, and I think we can get there.

7 And there's the secondary question, and with that
8 secondary question, when we get to it, I do think under
9 541(a)(3) it's not property of the estate until it's
10 recovered. And there has to be -- there is some burden on
11 the Debtor who's holding someone else's property, if that's
12 where we land --

13 THE COURT: (Indiscernible)

14 MR. ORTIZ: -- to demonstrate why they can hold on
15 to that and --

16 THE COURT: You're not -- your client's not
17 getting the money back until I decide whether they are
18 avoidable preferences. It's simple as that. You may not
19 like that answer, but that's the answer. Okay? Because
20 whether it's a creditors' committee or a post-confirmation
21 trustee trying to chase 50,000 people who got money back and
22 they're scattered all around the world, that's not going to
23 happen. Okay?

24 You need to work with the Committee and the
25 Debtors' counsel to come up with an agreed path. If you can

1 -- hopefully, you'll be able to, with respect to the issue
2 of whose property is it once it's in a custody account,
3 hopefully you're going to be able to stipulate as to most if
4 not all of the facts. Okay?

5 So, summary judgment will certainly be facilitated
6 -- summary judgment motion would be facilitated to the
7 extent that you can have a stipulation of facts. Ms.
8 Kovsky, this may go for the withhold account holders as
9 well.

10 So, you know, you all need to get together and
11 figure out a path forward that will allow the Court to
12 resolve these issues expeditiously. Some of your concerns,
13 hopefully, Mr. Ortiz, you'll be able to resolve through
14 stipulations. And where there are disputed issues of facts,
15 fine. You know, we'll try them, and I'll resolve them.

16 But, you know, you have filed an adversary
17 proceeding against the estate. I have this question about
18 the standing. It wouldn't be an issue if your individual
19 clients were named. Once you've done that, under Katchen v.
20 Landy, the estate can file its counterclaim against all of
21 them. It would arise out of the same facts, and I believe I
22 would have the authority to resolve those issues together.
23 That's what I want to try and do.

24 It may well be that your clients have very good
25 defenses to possible preference actions. I thought it was

1 remarkable that 89 days before the filing of the petition,
2 they returned custody -- they returned assets into the
3 custody accounts. If it had been 91 days, you'd be in a
4 different position than 89 days.

5 Ms. Kovsky, do you want to be heard?

6 MS. KOVSKY: Thank you, Your Honor. We're
7 positioned a little bit different procedurally from Mr.
8 Ortiz's client group, because we filed a motion for stay
9 relief. Our view was, there really isn't that preliminary
10 issue to be decided.

11 It didn't seem like there was a case or
12 controversy when the Debtors saying these coins are not
13 property of the estate and we're saying the coins are not
14 property of the estate, and the real question is the
15 preference issue that Your Honor has decided. We felt that
16 it would be appropriate to take up Your Honor on your prior
17 suggestion of, well, somebody ought to just file a motion
18 for stay relief, which is what we did.

19 Given your direction that we should be conferring
20 with the Debtor about a game plan on how to structure this
21 and how to get that preference question resolved, we're also
22 -- we have a constraint of timing to have the motion for
23 stay relief heard within 30 days. So, if Your Honor has any
24 guidance on what --

25 THE COURT: I'll start the hearing and then tell

1 you we have to adjourn it, which I can do.

2 MS. KOVSKY: Fair enough, Your Honor.

3 THE COURT: Here's what. We're not going to let
4 that 30-day issue stand -- if you insist on going forward in
5 30 days, I'll deal with it, you know. What I want you to do
6 is talk with Mr. Ortiz, and if Mr. Hershey is the one who's
7 handling from the Committee standpoint, I'm happy to try and
8 get this all resolved as quickly as possible.

9 If your issues -- and you did it in the form of a
10 lift stay motion. That's fine. Maybe your issues can be
11 separated out. I'm not sure. But either come back to me
12 with a plan you're agreed on or let me know what the
13 disagreement is. We can have a separate -- you know, I
14 mean, October 6th is not all that far off -- October 7th.
15 We'll get this worked out. I want to try and resolve your
16 clients' issues, Mr. Ortiz's clients' issues as soon as
17 possible.

18 The one thing I don't want, if none of this is
19 property of the estate and if the estate doesn't have good
20 preference claims to claw it back, I want the money to go
21 back to the people it belongs to. And I want that to happen
22 sooner rather than later. But at this stage, I don't quite
23 know enough about everything to be able to provide the
24 answer.

25 Mr. Hershey, do you want to be heard?

1 MR. HERSHEY: Yes, Your Honor. Thank you very
2 much. Again, for the record, Sam Hershey, from White &
3 Case, on behalf of the Official Committee of Unsecured
4 Creditors.

5 Your Honor, I had fairly lengthy remarks written
6 out that I'm streamlining substantially because I think Your
7 Honor has hit the main points that we agree with. We agree
8 that there needs to be discovery on these issues. We need
9 to understand whether these coins are held the way the
10 Debtors say they are held in segregated individual accounts.
11 We need to know where they were before they were in those
12 accounts. We need to know how the coins have moved through
13 the Debtors' systems. And so, there are matters, factual
14 matters, that we will need to drill down on.

15 I want to note for Your Honor -- and I appreciate
16 Your Honor noting the important role the Committee as a
17 fiduciary representative for all account holders appraised
18 in these matters. For that reason, we've asked for and
19 received consent from the Ad Hoc Custody Group and the
20 Debtors to intervene in the pending adversary proceeding.
21 And we will be filing an unopposed motion to intervene
22 shortly so that we can play the role that I believe we need
23 to play on these issues.

24 And Your Honor, I guess the only thing I'll say
25 is, just for the record, we just are reserving rights in

1 terms of the position we ultimately take on the relief
2 sought by the various Ad Hoc groups and by the Debtors until
3 we've been able to take the discovery we believe needs to be
4 taken and formulate a position on the issues that have been
5 raised, such as preference issue that Your Honor mentioned,
6 which we believe are complex issues. And while we certainly
7 want to facilitate the expeditious distribution to creditors
8 of assets that belong to creditors, we need to take the time
9 necessary to do this properly, and not risk having certain
10 account holders collect ahead of others, simply because they
11 moved first.

12 THE COURT: Okay. Mr. Hershey, if you have an
13 agreement with Mr. Ortiz and with the Debtor to permit the
14 Committee to intervene in the adversary proceeding that's
15 been filed, file the stipulation as soon as possible and
16 I'll approve it. And then you can go ahead and take... I
17 would think that most of your discovery requests, you ought
18 to be able to propound without even formal discovery. And
19 if you need to take formal discovery, as soon as you're a
20 party, go ahead and use the discovery rules and do it.

21 I'm not going to slow it down for particularly
22 lengthy discovery. Yes, I agree you need to have the facts.
23 You need to get the facts quickly. Okay?

24 MR. HERSHEY: Agree completely, Your Honor. Thank
25 you very much.

1 THE COURT: All right.

2 MR. KOENIG: Your Honor, Chris Koenig, for the
3 Debtors. May I be heard again?

4 THE COURT: Yes, please. Go ahead.

5 MR. KOENIG: Your Honor, just briefly, just wanted
6 to make clear. For the Debtors, this is a top priority. As
7 we explained at the last omnibus hearing, we take very
8 seriously that we want to return property to customers where
9 appropriate. But of course, we don't want valuable estate
10 assets to go out the door if we are going to later have to
11 bring avoidance actions to claw that property back into the
12 estate.

13 What we're trying to do is to, you know, walk a
14 fine line, take this in stages. The motion that we filed is
15 stage one. We continue our analysis in our discussions with
16 the other parties, and we have some ideas on how to
17 streamline the process forward. We look forward to working
18 with the other parties following this hearing on how we can
19 try to expeditiously resolve this issue.

20 Of course, we'll continue to work with the
21 Committee and the other parties to provide whatever factual
22 information they need ahead of October 7th or otherwise.
23 But just to be clear, you know, we take this very seriously.
24 We believe that customers should receive their property
25 back, but at the same time, we have to balance it against,

1 you know, the need to maximize the value of the estate for
2 all of the Debtors' customers.

3 Just to be clear, you know, and it's not for
4 today, you know, as we said at the last hearing, the 89 days
5 was a pure happenstance. And again, just to be clear, the
6 transactions in the custody didn't all happen on the 89th
7 day. You know, they happened over time on a rolling basis.
8 Again, not for today, but I just wanted the record to be
9 clear so that our silence wasn't interpreted in any other
10 way.

11 THE COURT: You know, Baldwin United filed its
12 Chapter -- an involuntary Baldwin-United Chapter 11 was
13 filed, I think, 89 days before the preference period would
14 have expired. And the timing was completely appropriate.
15 So, I'm not suggesting -- anyway, it is what it is. Okay.
16 I just --

17 MR. KOENIG: Thank you, Your Honor. We just
18 wanted the record to be clear. And of course, the facts
19 will bear that out. But we just wanted to make sure that
20 the record was clear about our position.

21 THE COURT: Let's see if you'll agree on the path
22 forward. Mr. Ortiz?

23 MR. ORTIZ: Thank you, Your Honor. I'll be really
24 brief. I just want to know -- you know, I appreciate Mr.
25 Koenig's comments. I will note they're the same ones we

1 heard at the last few hearings.

2 And you know, Mr. Hershey has mentioned discovery.
3 I believe, you know, we've been told that they have issues
4 that they're looking into, which of course isn't really from
5 the custody account holders; it's from the Debtors. And our
6 understanding is those conversations have been going on for
7 quite some time.

8 So, we appreciate that Your Honor has continued to
9 move these matters forward and will continue to speak to
10 everyone. But, you know, we're hopeful that that really is
11 on a, you know, as expedited track as is appropriate for all
12 the parties. Thank you, Your Honor.

13 THE COURT: You know, Mr. Ortiz, if you have a
14 suggested path forward that you want to put down on paper,
15 share it with the Debtor and the Committee and the withhold
16 account holders. And you can all do the same thing. You
17 can exchange proposals how to move forward. If you do that
18 and you have some roadblocks and you want to have a separate
19 conference with the Court to talk about it, we can do that
20 as well. It doesn't have to be one of the omnibus hearings
21 to do that. I'm happy to do that. I would like to move
22 this forward. To the extent that the Debtor should return
23 property that belongs to account holders, it should happen
24 sooner rather than later. Okay.

25 MR. ORTIZ: Thank you.

1 THE COURT: There is another hand raised on the
2 screen from a Ms. Neuman, who looks rather young in the
3 picture, but perhaps there's someone perhaps not as cute
4 who's behind the picture who wants to be heard. I guess
5 not. I don't know if it's a Ms. or a Mr. Cruz whose hand is
6 raised.

7 MR. CRUZ: Hi, Judge. Yeah, I just wanted to
8 remark on the coin report filings. It is helpful to have
9 more details than the latest one that was dated September
10 2nd. However, it was formatted very differently from the
11 one from July 29th. And it would be very helpful if we had
12 consistency in the formats across dates so we can see the
13 changing positions. The latest was lacking in the market
14 price of each coin and the quantity.

15 So, in a sense, it's obfuscating what's happening
16 with these coins. And it was filed late last night or early
17 this morning. It appeared that we have decreased our
18 position of bit coin -- I'm speaking, I guess, the royal we
19 here -- but 114 down in bitcoin if you net -- wrap bitcoin
20 and bitcoin together, about \$700,000 worth of ETH is also
21 disposed of. And I think about \$135,000 worth of
22 stablecoin. And it would be impossible to tell that by just
23 looking at the filings.

24 So, it would be helpful to have the same format so
25 we can actually see what's happening with these coins,

1 because it's essentially sands in the hourglass that are
2 ticking down. And it feels like it might have been a way of
3 hiding what's going on versus what we keep hearing about,
4 transparency being of paramount importance. So, it would
5 just be helpful for K&E and Celsius to just try to be
6 consistent with the formats you're providing across states
7 so we can actually see what's going on. Thank you, Judge.

8 THE COURT: Thank you, Mr. Cruz. Anybody else
9 want to be heard? Mr. Turetsky?

10 MR. TURETSKY: Good afternoon, Your Honor. David
11 Turetsky, of White & Case, for the Committee. Earlier in
12 the hearing, you did ask about the filing of the bylaws, and
13 I did want to give you a docket number.

14 THE COURT: Okay.

15 MR. TURETSKY: They were filed that Docket Number
16 682 under a notice of filing of bylaws.

17 THE COURT: Thank you very much.

18 MR. TURETSKY: Thank you.

19 THE COURT: All right. Anybody else want to be
20 heard before we adjourn?

21 MR. ORTIZ: Your Honor -- oh, I'm sorry.

22 MR. KOENIG: Your Honor, the only thing I would
23 say on the 341 meeting is, you know --

24 THE COURT: Who's that speaking? One at a time.
25 Go ahead. Mr. Ortiz, did you want to say something?

1 MR. KOENIG: Thanks (indiscernible) --

2 MR. ORTIZ: Yeah, I'm sorry, Your Honor.

3 MR. KOENIG: I'm sorry.

4 MR. ORTIZ: I just thought it would be --

5 MR. KOENIG: Chris Koenig from Kirkland & Ellis
6 again. I'm sorry.

7 THE COURT: Go ahead.

8 MR. ORTIZ: Sorry.

9 MR. KOENIG: After you.

10 MR. ORTIZ: I just thought I would note just be --
11 for purposes of efficiency and clarity, you know, we had
12 asked in the letter for a pretrial motion. I think we can
13 basically count this hearing is that. So, there isn't any
14 need for the Court to reply or for that separate hearing to
15 happen. Just wanted to kind of clean up the record amount.

16 THE COURT: Thank you. Let me just say, if you
17 all confer and can come up with a plan and you do that
18 before October 6th, share it with me in writing before, and
19 we can try and put firm dates down. Okay? So, yes, we're
20 going to have October 7th as a conference, but I encourage
21 you all to try and get something done before then. And then
22 if there are things that need some tweaks, we can deal with
23 that. Okay? All right.

24 MR. KOENIG: Thank you, Your Honor. Chris Koenig,
25 for the Debtors. Just a couple of sort of housekeeping

1 matters. On the 341 meeting, of course the Debtors would
2 like to continue to have that meeting at the pleasure of the
3 United States Trustee. We're, of course, able to divide and
4 conquer over here. From the Debtors' perspective we can
5 have, you know, the hearing on the one hand and a 341
6 meeting on the other hand. We have enough folks to divide
7 and conquer. I don't know if the United States Trustee is
8 able to do that or not. We can obviously continue that with
9 her offline.

10 As far as the scheduling on October 7th, will Your
11 Honor be entering a scheduling order, or would like the
12 Debtors to follow notice? We're happy to --

13 THE COURT: Why don't you file a notice. Why
14 don't you file the notice for 10:00 AM on the 7th and be
15 specific about what you heard. Okay? All right.

16 MR. KOENIG: Very good. We'll file something in
17 the main case and also in the adversary proceeding. Thank
18 you.

19 THE COURT: Thank you. Mr. Mendelson?

20 MR. MENDELSON: Hi, Your Honor. Eric Mendelson.
21 I'm a custody account holder as well as an EARN holder. And
22 I was late to this hearing, so I do apologize. I'm not sure
23 if this was addressed earlier.

24 I am concerned that the \$180 million or \$210
25 million, or whatever that evolving number is of custody

1 accounts, is being held by Celsius, which is far from a
2 trustworthy company. And I believe that the Court should
3 make a determination that these custody assets are held by a
4 true custodian, and outside of the reach of Celsius, while
5 Mr. Ortiz works this through the process to have these
6 custody funds released to us.

7 I'm just concerned that security breaches could
8 happen, any number of things could happen. Alex's cold
9 storage wallet could fall in the ocean, and then our \$180
10 million of crypto currency is lost, and there's no recourse
11 for us.

12 So, I just want to make the Court aware of my
13 concerns, as well as other custody account holders concerns,
14 and probably EARN holders accounts concerns that Celsius is
15 in control of our cryptocurrency, when it should be held by
16 a proper custodian at this time.

17 THE COURT: Thank you, Mr. Mendelson. Ms. Kovsky?

18 MS. KOVSKY: Just logistically, Your Honor -- I'm
19 sorry. Deb Kovsky, for the withhold account holders. Would
20 you like us to renotice the stay relief motion, or can we
21 rely on the Debtors' notice of the hearing for the 7th?

22 THE COURT: You can rely -- Mr. Koenig, include
23 that in the notice, okay, so that they don't have to file --

24 MR. KOENIG: Of course. We were planning to do
25 so, Your Honor.

1 THE COURT: All right.

2 MS. KOVSKY: Thank you, Your Honor.

3 THE COURT: Again, Ms. Kovsky, the same thing. If
4 you come -- you know, if you can reach an agreement on a
5 plan forward, let me know sooner rather than later, okay?

6 MS. KOVSKY: Will do, Your Honor.

7 THE COURT: All right. All right. We are
8 adjourned. Thank you very much, everybody.

9
10 (Whereupon these proceedings were concluded at
11 4:32 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: September 16, 2022